WINNIPEG VICTIM IMPACT STATEMENT PILOT PROJECT

FINAL REPORT

JANUARY 20, 1986 - MARCH 31, 1988

This report was prepared under contract by Theresa Clarke for the Manitoba Victim/Witness Advisory Board and submitted April, 1988 to the Department of Justice Canada.

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EXECUTIVE SUMMARY

* From January, 1986 to March 31, 1988, the Winnipeg Victim Impact Statement Pilot Project was carried out in the City of Winnipeg.

* The project was cost-shared by the Manitoba Department of the Attorney General and the Federal Department of Justice.

* The objectives of this project were:
  - Develop a program where the effects of the crime on the victim can in a systematic manner, be available to the court at the time of sentencing.
  - By initiating contact with victims, improve the perception of victims on their role in the court process.
  - Determine the feasibility of developing a program that would give all victims of crime the opportunity to provide information to the court on the impact of the crime.

* The Winnipeg Victim Impact Statement Project is a court-based model of preparing and introducing Victim Impact Statements. Unlike the other pilot projects, the Winnipeg project was independent of a police department or R.C.M.P. Detachment.

* Victim Impact Statements were prepared when an accused person had been arrested and charged with one of the target offences - Sexual Assault, Assault Cause Bodily Harm, Assault with a Weapon, Aggravated Assault and Non-commercial robbery.

* The Victim Impact Statement remained in the control of the project, negating the use of the Victim Impact Statement during the plea bargaining process. Following a finding or plea of guilty, the Victim Impact Statement was distributed to the crown attorney, defense counsel and judge directly from the project.

* 1043 victims were referred to the project, resulting in 364 prepared Victim Impact Statements.

* Initially, a fair amount of opposition was expressed by Criminal Justice Personnel. This opposition appears to have subsided.

INTRODUCTION

The Winnipeg Victim Impact Statement Project commenced operation in mid-January, 1986 and is under the guidance of the Manitoba Victim/Witness Advisory Committee. It is jointly funded by the Manitoba Department of the Attorney General and the Federal Department of Justice.

The Winnipeg Victim Impact Statement Project is a court based model. Contact is made with targeted crime victims when an arrest of an offender has occurred and charges laid. The resulting Victim Impact Statement is tendered to the court following a plea or finding of guilt.

A Victim Impact Statement provides the judge, the defence counsel and the crown attorney in the criminal justice proceedings with information concerning the physical, financial and emotional impact of a crime upon the victim. It is felt that this information is useful to the court at the time of sentencing, as the seriousness of the crime can be determined in part by the detrimental effects of the crime upon the victim.

The impetus for the Victim Impact Statement Project developed out of a concern amongst criminal justice individuals that the victim should be provided with the opportunity to inform the court of the impact of the crime upon him/herself, as a means of ensuring that the criminal justice system is more responsive to his/her needs.

In 1981, a Federal-Provincial Task Force on Justice for Victims of Crime examined the issue of Victim Impact Statements and in the Implementation Report of the Federal-Provincial Working Group on Justice for Victims of Crime, Victim Impact Statements were addressed in the following manner (pg. 214-215):

The Federal-Provincial Working Group were concerned with respect to the use of victim impact statements that:

- proper information ultimately reaches the sentencing judge;
- the victim impact statement should be restricted to stating the impact on the victim and his/her losses not the victim's opinion on the appropriate sentence;
- receipts, medical reports, etc., should accompany the victim impact statement where possible to substantiate the VIS;
- a VIS should be obtained as soon as possible after the crime and updated prior to sentence being imposed;
- the victim impact statement should be voluntary and no adverse inference should be drawn from the fact that the victim has not submitted a VIS;
- the contents of the victim impact statement must be either admitted by defence counsel or proved (in the same manner as a pre-sentence report); and
- victims should be informed that their VIS will be subject to cross examination if the contents are disputed.

The Winnipeg Victim Impact Statement Project was developed following the above guidelines. This final progress report of the Winnipeg Project will detail the developmental and

organizational aspects of the project and the efforts made by the project in trying to entrench Victim Impact Statements into the Criminal Justice System.

FUNDING:

As indicated in the introduction, the Winnipeg Victim Impact Statement Project is jointly funded by the Manitoba Department of the Attorney General and the Federal Department of Justice. The Project was originally funded for a 17 month period from January, 1986 to July, 1987 [see original Funding Agreement (Appendix A)]. A subsequent funding proposal was submitted in June, 1987 to the Federal Department of Justice requesting continued funding until March 31, 1988. (see Appendix B). The proposal was approved and the Federal Department of Justice and the Manitoba Department of the Attorney General continued to cost-share the project until March 31, 1988. (please see amended agreement, Appendix C)

TARGET POPULATION:

Victims of crime where an accused person has been arrested and charged with one or more of the following charges:

- Assault Cause Bodily Harm or Assault with Weapon, 245.1
- Aggravated assault, 245.2
- Sexual assault 246.1, 246.2 and 246.3
- Robbery (non-commercial) 302

The incidents must have occurred in Winnipeg's Police Districts #1, #3, or #6. (Please note change in targeted police districts - original proposal (Appendix D) designated target districts as #3, #4, and #6.) However, after monitoring the number of incidents in these areas, it was determined that the number of incidents would not provide a measurable data base and therefore police district #1, a higher crime area, was added to the target districts and police district #4 was deleted. The districts not targeted for Victim Impact Statements served as a control group for use by the researcher/evaluator.

PROJECT OBJECTIVES:

Rationale as perceived by sponsoring agency:

1. Develop a program where the effects of the crime on the victim can in a systematic manner, be available to the court at the time of sentencing.

2. By initiating contact with victims, improve the perception of victims on their role in the court process.

3. Determine the feasibility of developing a program that would give all victims of crime the opportunity to provide information to the court on the impact of the crime.

VICTIM IMPACT WORKER'S POSITION:

Newpaper Ad (Appendix E).

Job Description (Appendix F).
Commenced employment: January 20, 1986.
Terminated employment: March 31, 1988.

ORGANIZATIONAL ISSUES

During the first month of operation, organizational duties were attended to. This involved meeting with agencies working in the area of victim services to avoid duplication of services and to enhance the efficiency of the process by which Victim Impact Statements are prepared.

Victim Services, Winnipeg Police Department

The victim impact worker met with Bernie Dionne, Constable in charge, Victim Services Unit. Arangements were made to avoid the duplication of services in terms of contacting victims. Victim Services Workers will not contact victims that are targeted to have a Victim Impact Statement prepared. During the Victim Impact Statement interview with the victim, if it is evident that there is a need for additional help, a referral will be made by the Victim Impact Worker to the Victim Services Unit, Winnipeg Police Department. Relations with this agency have been very positive. Staff is cooperative and helpful.

Court Unit, Winnipeg Police Department

Arrangements made with Court Unit Staff to set aside targeted incident reports following an accused person's first court appearance, for perusal by the Victim Impact Worker. This system has been working very well.

Mediation Services

There was some concern both on the part of the Victim Imapct Worker, and Ray Friesen, Director, Mediation Services, regarding incidents that were targeted for Victim Impact Statement preparation, which had also been diverted for mediation.

A meeting was held, and concerns were alleviated. The decision as to whether a Victim Impact Statement is prepared or whether the incident proceeds through mediation, ultimately rests with the victim, as both options are voluntary. A Victim Impact Statement that has been prepared on a victim will not be used during the mediation process, should a victim choose both to go to mediation and prepare a Victim Impact Statement. To date, situations where a Victim Impact Statement was prepared and mediation was also chosen have returned to the criminal court.

Child Witness Assistance Program

The Victim Impact Worker met with Diane Hryshko, Coordinator of this program.

In the past, Diane Hryshko has prepared Victim Impact Statements on many younger victims following a request from the crown or probation. Arrangements were made to avoid duplication of services. The Victim Impact Worker will prepare Victim Impact Statements for victims 14 years and older of the targeted incidents. Diane Hryshko will continue to provide Victim Impact

Statements for younger victims, should she receive a request.

Manitoba Criminal Injuries Compensation Board.

The Victim Impact Worker attended a presentation which detailed the eligibility criteria and the correct manner in which to make a referral. Relations with staff and program have been excellent.

The development of forms and letters also occurred during this developmental phase as well as the development of the protocol and procedures to be used by the project in obtaining and distributing Victim Impact Statements.

FORMS & LETTERS

1. Victim Impact Statement questionnaire (Appendix G).

The form was prepared following research into various formats and discussions with members of the Victim/Witness Advisory Board. It was decided that the form was the most unobtrusive to the victim, yet provided the most specific method of obtaining the necessary data. Information is obtained during a personal interview with the victim and is recorded on the questionnaire. This questionnaire is signed by the ictim.

2. Victim Impact Statement (format - Appendix H). The information collected on the Victim Impact Statement questionnaire is compiled into a narrative format. This Victim Impact Statement is presented to the judge, defense counsel and Crown Attorney following a finding or admission of guilt. A copy of the Victim Impact Statement is given to the victim so that they are aware of the content of the Victim Impact Statment which will be given to the court.

3. Organizational forms. (Appendix I).
   - checklist
   - victim contact card
   - accused/victim cards

4. Letters (Appendix J).

Initial contact letter- no phone
Initial contact letter - phone
Out of town contact letter - used if victim resides outside of Winnipeg. A Victim Impact Statement questionnaire is mailed with the accompanying letter and stamped self addressed envelope requesting that the form be completed and mailed back to the Victim Impact Worker if the victim is desirous of having a Victim Impact Statement prepared.

Prepared Victim Impact Statement Letter - this letter accompanies the prepared Victim Impact Statement when it is mailed to the victim.

Letter to Judge, defence counsel and Crown Attorney - this letter accompanies the prepared Victim Impact Statement at time of submission to the judge, defense counsel and

crown attorney.

5. Memo to Crown Attorney (Appendix K).

This memo is distributed prior to a preliminary hearing or a trial, to the crown attorney handling the case and advises the crown that a Victim Impact Statement has been prepared for the victim in the case.

5. Brochure (Appendix L).

The brochure describing the Winnipeg Victim Impact Statement Project Pamphlet was developed for distribution to targeted victims of crime and is also used for educational purposes. The pamphlet is sent with all initial contact letters, out of town contact letter and the letter to judge, defence counsel and crown attorney.

PROCEDURE (see Protocol, Appendix M)

The point of intervention by the victim impact worker is immediately following receipt of a police report from the Court Unit Staff. The reports are put aside following an accused persons first court appearance and are photocopied by staff of the Winnipeg Police Victim Services Unit. The victim impact worker attends once a week to monitor the situation, however the reports are sent to the Victim impact worker's office on a daily basis.

Following receipt of the police reports, the reports are divided into target and control districts depending upon the area of town in which the crime occured. The Victim Impact Statement project incidents (also referred to as target incidents) are placed individually into a file with the victims name on the file. A checklist (described above, Appendix I) is attached to the file. A contact letter (described above, Appendix J) is then sent to the victim. If the victim has a phone, attempts to contact the victim by phone will be initiated.

If the response to the letters or the phone contacts is positive and the victim wishes to have a Victim Impact Statement prepared, a meeting is arranged. This meeting is arranged to minimize disruption to the victim, therefore office hours are flexible and the Victim Impact Worker is available to meet the victim at a location agreeable to both (office, victim's home, coffee shop etc.).

Prior to commencing the interview, the project is explained to the victim. The victim is made aware that preparation of a Victim Impact Statement is voluntary; that the Victim Impact Statement will be distributed to the judge, defence counsel and crown counsel; and that the victim may be called upon to testify should be the contents of the statement be challenged.

The interview with the victim deals with the physical, financial and emotional impact of the crime. The Victim Impact Statement questionnaire (described above, Appendix G) is used to take notes during the interview. At the conclusion of the interview, the victim reads the notes over and signs the form.

After the interview, the Victim Impact Statement is prepared relying upon the notes taken during the interview on the Victim Impact Statement questionnaire. A copy of the prepared Victim Impact Statement is sent to the victim along with a prepared Victim Impact

Statement letter. This informs the victim as to what will be distributed to court following a finding or plea of guilty.

The case is tracked through the courts by the Victim Impact Worker. Prior to a preliminary hearing or trial, the victim is again contacted and the information contained in the Victim Impact Statement is updated. This keeps the information in the Victim Impact Statement current.

The crown attorney is notified prior to a preliminary hearing or trial that a Victim Impact Statement has been prepared should there be a finding of guilt or guilty plea. Following a finding of guilt or guilty plea, the Victim Impact Statement is distributed to the crown attorney, defence counsel and judge.

PUBLIC EDUCATION AND LIAISON ACTIVITIES

January 16, 1986	CRIMINAL JUSTICE SUBSECTION
	Reviewed project proposal. Those present voiced their concerns regarding Victim Impact Statements. Understandably, defence bar was not in favour of Victim Impact Statements.
February 7, 1986	CROWN ATTORNEYS
	Met with Crown Attorneys and reviewed project proposal and administrative details concerning notification of crown attorney as to the presence of a Victim Impact Statement and the filing of same. Crown attorneys voiced concerns regarding the procedure and timing of filing of Victim Impact Statement. The project proposal to remain the same regarding the filing of a Victim Impact Statement only after a finding or plea of guilty. Victim Impact Statement to remain in the hands of the Victim Impact Worker and will be distributed by the worker to the defence, crown and judge individually. This is to ensure the project is seen as providing impartial objective Victim Impact Statements rather than a crown document.
February 11, 1986	PROVINCIAL COURT JUDGES
	Met with the Provincial Court Judges. We reviewed the project proposal. As well, a sample Victim Impact Statement was presented. The Judges were in favour of the concept of Victim Impact Statements. Some discussion centered on the timing and method of submission of a Victim Impact Statement.
April 1, 1986	QUEEN'S BENCH JUDGES

John P. Guy, Q.C., Assistant Deputy Minister, Criminal Justice Division, met with Chief Justice Hewak and Hersh Wolch, Q.C., president of the Defence Trial Lawyers Associaton. Some concerns were raised regarding the validity of Victim Impact Statement during the sentencing proceedings. Subsequent to this meeting, a paper "Victim Impact Statements - A Relevant Consideration in Sentencing: (Appendix N) was prepared. This paper addresses the legalities of introducing Victim Impact Statements to the court at the time of sentencing and lists cases where the effect of the crime on the victim has been considered.

May 1, 1986

WOMEN'S ADVOCACY PROGRAM

The victim impact worker met with the employees of this program to discuss the Victim Impact Statement Project. There is not a duplication of services between the Victim Impact Statement Project and the Women's Advocacy Program, as wife abuse victims are excluded from the Victim Impact Statement Project.

May 7, 1986

WINNIPEG POLICE DEPARTMENT

Police officers in the target districts #1, #3 and #6 were made aware of the Victim Impact Statement Project through the distribution of pamphlets detailing the project.

May 20-22, 1986

VICTIM IMPACT STATEMENT WORKSHOP
HECLA ISLAND, MANITOBA

The federally funded workshop involved the project personnel and evaluators from the Victim Impact Statement Projects across Canada. Federal government representatives were also present. The Winnipeg Victim Impact Worker was involved in the planning and preparation of the workshop and was also responsible for the preparation of the workshop proceedings.

June 16, 1986

LAW TEACHER - SELKIRK HIGH SCHOOL

The Victim Impact Worker had a meeting with the law teacher discussing the Victim Impact Statement Project. Concept of Victim Impact Statements to be included during class discussion on the criminal justice system.

July 15, 1986

VICTIM SERVICES
WINNIPEG POLICE DEPARTMENT

The Victim Impact Worker met with Constable Dick Jones, who is in charge of Victim Services to discuss the collection of police reports for use by the Victim Impact Worker. Victim Services staff will collect the necessary information four days per week.

This will eliminate the Victim Impact Worker from making daily trips to the Public Safety Building

July. 18, 1986 — PRESS CONFERENCE - JUSTICE FOR VICTIMS OF CRIME ACT

Manitoba Attorney General, Roland Penner, introduced new bill "Justice for Victms of Crime Act" which would levy a surcharge on fines to generate a fund to be used for development of services for crime victims. Representatives from all victim programs were present and were introduced to the media.

July - September, 1986 — S.T.E.P. STUDENT

S.T.E.P. student hired to conduct an assessment of victim services needs in Manitoba. Victim Impact Worker involved in the hiring and supervision of the S.T.E.P. student.

November 5, 1986 — ALTERNATIVE SENTENCE PLANNING

The Victim Impact Worker met with Andrew Smith, coordinator of Alternative Sentence planning. Objective of meeting was to discuss both programs and the cooperative activites which could exist between the programs.

November 19, 1986 — AGE AND OPPORTUNITY CENTRE

The Victim Impact Worker made a presentation to Age and Opportunity Older Victim Services volunteers about the Victim Impact Statement Project and a general discussion followed the presentation. Relations with the Age and Opportunity Centre have been excellent.

November 27, 1986 — MEDIATION CONFERENCE

The Victim Impact Worker attended the Mediation Conference.

December 4, 1986 — CROWN ATTORNEYS CONFERENCE

The Victim Impact Worker was part of a Panel Discussion "The Sentencing Hearing". The role of Victim Impact Statements during the sentencing hearing and the mechanism to obtained these statements was discussed.

January 14, 1987 — VICTIM SERVICES, W.P.D.

The Victim Impact Worker made a presentation to the Victim Services volunteers as to the objectives of the Victim Impact Statement Project and the ways in which cooperative activities could occur.

January 24, 1987	MANITOBA BAR ASSOCIATION - MIDWINTER CONFERENCE.
	The Victim Impact Worker was part of a Panel Discussion on Victim Impact Statements. Other members of the Panel were John Guy, Q.C., and Hersh Wolch, Q.C.
February 13, 1987	CONFERENCE - VIDEOTAPING CHILD SEXUAL ABUSE VICTIMS
	The Victim Impact Worker attended one day of this two day conference.
March 26, 1987	LAW STUDENT - INTENSIVE CRIMINAL LAW
	The Victim Impact Worker met with a third year law student who was preparing a background paper on Victim Impact Statements
April 6 - 9, 1987	WESTERN CROWN ATTORNEYS CONFERENCE
	Preparation of information on the Victim Impact Statement Project for presentation by Mr. John P. Guy, Q.C. at the Western Crown Attorney's Conference.
April 9, 1987	VICTIM SERVICES, WINNIPEG POLICE DEPARTMENT
	The Victim Impact Worker met with Cst. Richard Jones, officer in charge of Victim Services, to discuss implementation of emergency financial aid to crime victims.
September 30, 1987	MEDIATION SERVICES
	The Victim Impact Worker met with Paul Redekop, director of Mediation Services for a general discussion of post-plea mediation and the involvement of Victim Impact Statements in the delivery of this service. More specific discussions postponed until termination of pilot phase of Victim Impact Statement Project.
September, 1987- March, 1988	CRIMINOLOGY FIELD STUDENT
	Supervised placement of Criminology Field Student placed with the Victim Impact Statement Project one day per week.
October 22 & 23, 1987	COMMUNICATING WITH THE NATIVE PUBLIC
	The Victim Impact Worker participated in this two day workshop on communicating with the native public.
November 14, 1987	CRIME VICTIMS ADVOCACY ORGANIZATION

CONFERENCE - CHAOS OR COOPERATION

The Victim Impact Worker was part of a panel discussion on the role of professionals in the delivery of services to crime victims.

March 16, 1988

CRIME VICTIMS ADVOCACY ORGANIZATION
VICTIM SERVICES SURVEY

The Victim Impact Worker met with Vallie Stearns, who has been hired by the Crime Victims Advocacy Organization to conduct a review of Victim Services in Manitoba.

RELATIONS WITH SPONSORING AGENCY - MANITOBA VICTIM/WITNESS ADVISORY BOARD

The Manitoba Victim/Witness Advisory Board is a multi-disciplinary board consisting of the follwoing members:

- Assistant Deputy Attorney General, Criminal Justice Division, Manitoba Department of the Attorney General.
- Chief Judge, Provincial Judges Court
- Victim/Witness Assistance Program, Manitoba Department of the Attorney General
- Probation Services, Manitoba Department of Community Services and Corrections
- Manitoba Committee on Wife Abuse
- Community Relations Division, Winnipeg Police Department
- Victim Services, Winnipeg Police Department
- Older Victim Services, Age and Opportunity Centre
- Community Relations Division, R.C.M.P.
- Research and Planning Division, Manitoba Department of the Attorney General
- Victim Impact Statement Project, Manitoba Department of the Attorney General.

The multidisciplinary Board has been helpful in the coordination of the project. Participation on the part of the Victim Impact Worker at the board meetings involved the presentation of summary project statistics.

The Victim Impact Worker met with the Board on the following occasions:

February 25, 1986
March 20, 1986
September 3, 1986
September 24, 1986
October 15, 1986
November 26, 1986
February 11, 1987
March 25, 1987
May 6, 1987
June 17, 1987
July 29, 1987
September 9, 1987
October 21, 1987

January 13, 1988
February 24, 1988

MEDIA RELATIONS (see Appendix O for articles)

March, 1986	HEADNOTES & FOOTNOTES Publication of Manitoba Bar Association "Victim Impact Statement Project to Commence February 17, 1986!"
March 9, 1986	WINNIPEG FREE PRESS "Victims reveal impact of crime"
June 25, 1986	WINNIPEG FREE PRESS "Judge questions validity of victim-impact reports"
July/August 1986	NATIONAL, Vol. 13, no. 7. "Prosecutor doubts victims' statements will have much impact."
December 14, 1986	WINNIPEG FREE PRESS "Judge flayed for seeking personal opinions."
January 17, 1987	TORONTO GLOBE AND MAIL "Victims of crime given a chance to speak."
January 25, 1987	THE WINNIPEG SUN "Program on Trial"
February 1, 1987	THE WINNIPEG SUN "Let's not victim-ize courts." * Also included with articles, is the unpublished letter from the project to the author of the above two articles.
February, 1987	NATIONAL, Vol. 14, no.w. CANADIAN BAR FOUNDATION "Argument over victim-impact statements remains heated."
March 5, 1987	THE WINNIPEG SUN

	"Judges blast victim impact statements."
March 6, 1987	THE WINNIPEG SUN
	"Program stumbles."
March 6, 1987	THE WINNIPEG FREE PRESS
	"Court rebuked for knocking report."
March 6, 1987	THE WINNIPEG SUN
	"Who will speak for the victim?"
March 11, 1987	THE OTTAWA CITIZEN
	"Most feel justice system favors rich."
March 12, 1987	THE WINNIPEG SUN
	"Statements rile judges once again."
March 12, 1987	THE WINNIPEG FREE PRESS
	"Victim reports assailed."
April 3, 1987	THE WINNIPEG FREE PRESS
	"Chief justice throws 'red flag' on victim impact statements."
April 3, 1987	THE WINNIPEG SUN
	"Man acquitted of sex assault."
April 5, 1987	THE WINNIPEG FREE PRESS
	"Crime victim statements defended as filling vacuum in justice system."
April 15, 1987	THE WINNIPEG FREE PRESS
	"Man jailed for vicious beating."
April 15, 1987	THE WINNIPEG SUN
	"Verdict splits up brothers."
May 6, 1987	THE WINNIPEG SUN

"Public letter to the editor."

June, 1987 — NATIONAL, June, 1987
CANADIAN BAR ASSOCIATION

"Victim impact statements and restitution receive justice ministers' support."

June 17, 1987 — THE WINNIPEG FREE PRESS

"Victim impact statements supported."

July 12, 1987 — THE WINNIPEG FREE PRESS

"Accident haunts victim."

July 15, 1987 — THE WINNIPEG FREE PRESS

"Victim impact reports attacked."

July 15, 1987 — THE WINNIPEG SUN

"Judge throws out victim statement."

July 16, 1987 — THE WINNIPEG FREE PRESS

"Victim report refused."

July 16, 1987 — THE WINNIPEG SUN

"Victim project hits wall in court."
"Courts focus on accused."

July 17, 1987 — THE WINNIPEG FREE PRESS

"A word from the victim."

July 19, 1987 — THE WINNIPEG SUN

"Bitter mom slams judges on ruling."

July 31, 1987 — THE WINNIPEG SUN

"Victims to say more."

August 2, 1987 — THE WINNIPEG FREE PRESS

"Fear of retaliation common to crime victims."

August 7, 1987	THE WINNIPEG FREE PRESS
	"Project buoys officials."
August 16, 1987	THE WINNIPEG FREE PRESS
	"Victim statements divide legal community." "Victim impact reports tell of pain, salary loss."
September 25, 1987	THE WINNIPEG FREE PRESS
	"Brothers get two-year term for assault."
November, 1987	CHATELAINE MAGAZINE
	"Do victims deserve a say in court?"
November 27, 1987	THE LAWYERS' WEEKLY
	"Criminal lawyers condemn victim impact statements." "Judges differ markedly in findings of appropriate term for mock offenders."
December, 1987	THE NATIONAL, Vol. 14, no. 11 CANADIAN BAR ASSOCIATION
	"Impact statements: Will criminals become victims of vengeance?"

OTHER MEDIA RELATIONS

March 10, 1987, CBC Radio, Call in show on Victim Impact Statements. Hymie Weinstein, Q.C., defence counsel, was guest. Public response was overwhelmingly in favour of Victim Impact Statements.

April/May, 1987, CKY Radio, Discussion with producers of Connections and City Life. They will be doing a series on crime to be aired in September, 1987. A segment on Victim Impact Statements is being considered and a preliminary interview was conducted with the Victim Impact Worker.

PROCEDURAL AND OPERATIONAL REVIEW

The process of obtaining and compiling Victim Impact Statements has worked well. Please see project statistics (Appendix P). In reflecting upon the resources available, i.e. one victim impact worker, it is felt that the operational side of the Victim Impact Statement Project could be more streamlined and effective if secretarial support was available. This would enable the victim impact worker to be more involved and more effective in the client and court processes as opposed to devoting time to clerical duties.

Some difficulty has been experienced in introducing Victim Impact Statements to the courts. As illustrated by the newspapers articles (Appendix O) difficulty was experienced by the project in changing the attitudes of criminal justice officials towards Victim Impact Statements. There appeared to be a great fear on the part of defence counsel and judges that Victim Impact Statements would be vengeful. While this perception has not been entirely alleviated, it appears that the fear has subsided. This statement is based upon the fact that Victim Impact Statements continue to be introduced to the court, yet there has in recent months been no adverse media attention relating to Victim Impact Statements.

From the projects perspective, this fear on the part of defence counsel and the judiciary was unfounded and was not based on actual experience with Victim Impact Statements from the Victim Impact Statement Project. The Court of Appeal was dealing with a Victim Impact Statement from the Child Abuse Witness Program (see Appendix Q for Court of Appeal rulings). This program deals with young victims of physical or sexual abuse and the Victim Impact Statements generated by this program do not resemble those from the Victim Impact Statement Project Only two Victim Impact Statements from the project were disallowed in court and the basis for the non-use was not the content of the Statement, but the fact that the defence counsel wished to obtain a ruling from the court as to the use of Victim Impact Statements. During and since the time of these two incidents, (July, 1987), Victim Impact Statements have continued to be used at both the Queen's Bench level and the Provincial Court level.

Resistance was also experienced from the Crown attorneys. The Winnipeg Victim Impact Statement Project differs from other projects, in that the Victim Impact Statement remains under the control of the project until after a finding or plea of guilty. This negates the usage of the Victim Impact Statement during the plea bargaining process. Many crown attorneys wanted possession of the Victim Impact Statement for use during this process. This created some reluctance upon the part of Crown Attorneys to call for the Victim Impact Statement after a finding or plea of guilty. Upon review of this information, the Assistant Deputy Attorney General dispatched a memo (Appendix R) to the crowns instructing that the use of the Victim Impact Statement was mandatory and advising them that the situation would be monitored. The memo increased the consistency of the use of Victim Impact Statements and very few problems have been experienced since the date of the memo.

APPENDIX A

MEMORANDUM OF AGREEMENT

Made at Ottawa, this day of 19 .

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA (hereinafter referred to as "HER MAJESTY") represented herein by the Minister of Justice of Canada (hereinafter referred to as "the Minister"),

OF THE FIRST PART

AND: The Manitoba Victim Witness Advisory Board, 405 Broadway Avenue, 5th Floor, Winnipeg, Manitoba, R3C 3L6 represented herein by Mr. John Guy, Chairperson (hereinafter referred to as "the Recipient"),

OF THE SECOND PART

WHEREAS the Recipient has, by application, requested financial assistance of the Minister under the terms of the Criminal Law Reform Fund; and

WHEREAS the Minister is desirous of providing such financial assistance to the Recipient for the purpose stated below;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto, in consideration of the covenants and agreements hereinafter contained, covenant and agree with each other as follows:

PURPOSE OF CONTRIBUTION

The Recipient agrees to use the monies contributed by Her Majesty solely for the purpose of implementing a pilot project to introduce victim impact statements into the court system.

MAXIMUM AMOUNT OF CONTRIBUTION

Her Majesty agrees to contribute toward the expenditures described in Appendix "A" and incurred by the Recipient in the period from January 2, 1985 to June 30, 1987 for the purpose stated above an amount not to exceed forty three thousand seven hundred and twenty five dollars ($43,725.00).

PAYMENT

Her Majesty agrees to make payments to the Recipient as follows:

(a) A payment of $10,900.00 on the signing of this Agreement;

(b) Additional payments, not exceeding in total $28,453.00 depending on the cash flow requirements of the project, and upon receipt and approval of interim financial statements or cash forecasts;

(c) A final payment upon receipt and approval of the required Financial Statements and Project Reports.

.../2

OTHER REVENUE

If the Recipient receives additional contributions or payments in respect of the project covered by this Agreement in greater amounts, or from other sources than those named in its application, Her Majesty's contribution may be reduced by such an amount as the Minister may decide.

FINANCIAL STATEMENTS

The Recipient agrees to provide the Minister no later than June 23, 1987 with a detailed Financial Statement of Revenue and Expenditure for the project, in such form as the Minister may prescribe, for the period from January 2, 1985 to June 30, 1987 accompanied by photocopied or original vouchers in proof of payment of the claimed expenses.. The statement and vouchers are to be addressed to the Department of Justice, Grants and Contributions Audit Section, Room 939, Justice Building, Ottawa, Ontario, K1A 0H8.

PUBLIC ACKNOWLEDGEMENT

Any information released or announced to the public concerning the subject matter of this Agreement shall adequately acknowledge the contribution made by the federal Department of Justice.

USE OF RESULTS

The Recipient shall retain copyright in any work produced by it as part of this project; but the Recipient shall not contract away its copyright interest without the approval of the Minister, and the Recipient hereby authorizes the Minister to produce, reproduce or publish in any form or by any means the original work or any adaptation thereof in any language for use within the federal public service and for non-commercial distribution or dissemination.

SPECIAL CONDITIONS

The Recipient agrees that:

(a) Activity reports be completed on a quarterly basis and a comprehensive final report be completed at the end of the project and copies be provided to Ms. Thérèse Lajeunesse, Program Manager, Programs and Projects Administration Section, Room 214B, Department of Justice, Ottawa, Ontario, K1A 0H8.

(b) The Department of Justice be represented on the Manitoba Victim Witness Advisory Board in order to monitor the progress of the project.

TERMINATION

This Agreement may be terminated by the Minister by giving the Recipient at least thirty (30) days' notice through registered mail.

.../3

APPENDICES

The attached "Department of Justice - General Conditions - Contributions" (Form JUSP172), Appendices "A" and "B" form part of this Agreement.

IN WITNESS WHEREOF the parties hereto have signed hereunder on the day and year first above written.

Witness

Witness

Minister of Justice of Canada

Appendix "A"

to the Agreement between
the Department of Justice, Canada and
The Manitoba Victim Witness Advisory Board

BUDGET

	Department of Justice Canada	Department of the Attorney General - Manitoba
Salary of Victim Impact Worker (including benefits)	$43,725.00	
Office Space		$ 2,400.00
Telephone		900.00
Office Equipment		1,500.00
Stationary, brochures, postage		1,500.00
Travel Expenses		3,960.00
Business Insurance for Car		300.00
TOTAL	$43,725.00	$10,560.00

The contribution of the Department of Justice of Canada will be limited to the lesser of $43,725.00 or the actual and approved expenditures in respect of those expenditure items listed in the Department of Justice column.

APPENDIX 'B'

The government has adopted a policy to ensure that hiring and contracting of suppliers of goods and services will meet the highest ethical standards. The Attorney General of Canada has made it clear that these standards will be scrupulously observed. The relevant portion of the policy precludes appointment not only of a Minister's immediate family, that is, Minister's spouse, parents, children, brothers and sisters, but also any member of the immediate family of his or her spouse, the immediate families of other Ministers and of party colleagues in the House of Commons and the Senate. It applies, as well, to organizations outside of government in which such family members are employed in senior positions of authority including membership on Boards of Directors. Your signature on this contract or agreement certifies that this aspect of the government rules on conflict of interest has been discussed with you and that you and your organization comply in every respect with these rules.

Department of Justice / Ministère de la Justice

GENERAL CONDITIONS - CONTRIBUTIONS

CONDITIONS GÉNÉRALES - CONTRIBUTIONS

1. Definitions

(1) Unless the context otherwise requires

(a) "Minister" means the federal Minister of Justice and includes any person duly authorized to act on his behalf;

(b) "Department" means the federal Department of Justice;

(c) "Agreement" means the Memorandum of Agreement of which these "General Conditions" form a part;

(d) "herein", "hereby", "hereof", "hereunder" and similar expressions, when used in any section, shall be understood to relate to the Agreement as a whole and not merely to the section in which they appear;

(e) "Recipient" means the organization or person receiving the contribution and being responsible for the performance and administration of the "Agreement";

(f) "Audit" means any examination of the accounts and records of a Recipient or other information deemed necessary in the circumstances.

(g) "Project" means the services performed or to be performed by the Recipient under the terms of this Agreement.

(2) In the event of any inconsistencies, the provisions of the Agreement shall prevail over these "General Conditions".

2. Public Acknowledgement

Any information released or announced to the public concerning the subject matter of this Agreement shall adequately acknowledge the contribution made by the federal Department of Justice.

3. Amendments

This Agreement may be amended by the mutual written consent of the Parties hereto.

4. Assignment

The Recipient shall not assign this Agreement or any part thereof without the written permission of the Minister, but nothing herein contained shall preclude the Recipient from enlisting the assistance of others in carrying out his obligation under this Agreement.

5. Members of the House of Commons

No member of the House of Commons shall be admitted to any share or part of the Agreement or to any benefit arising therefrom.

6. Notice

Any notice to the Recipient hereunder shall be effectively given if sent by letter, telex or telegram, postage prepaid or with charges prepaid as the case may be, addressed to the Recipient at the address shown in the Agreement, or if no address is so shown, at the address shown in the records of the Minister. Any notice so given shall be deemed to have been received by the Recipient at the time when, in the ordinary course of events, such letter, telex or telegram would have reached its destination.

7. Accounts

The Recipient agrees to keep proper accounts and records of the revenues and expenditures for the subject matter of the Agreement, including all invoices, receipts and vouchers relating thereto. The Recipient will provide financial statements and forecasts as stipulated in the Agreement and as required from time to time by the Minister.

8. Audit

The financial accounts and other records of the Recipient shall be accessible, during normal business hours, to the representatives of the Minister, or to others appointed by the Minister to conduct audits. The Recipient shall provide the necessary facilities for the audit and shall furnish all such information as the auditors may require. The Recipient will keep all financial accounts and vouchers and other records for a period of at least three years after the expiry of the Agreement.

9. Final Contribution Adjustments

The Minister agrees to inform the Recipient of the financial results of any audit, and to pay to the Recipient as soon as possible after the completion of the audit any monies which the audit may show to be then due and owing to the Recipient. The Recipient agrees to pay to the Minister, on being informed of the results of such audit, any monies which the audit may show to be then due and owing to the Minister, either by reason of overpayment to the Recipient by the Minister, or otherwise.

10. Not Employees of the Crown

It is understood and agreed that the Recipient is not engaged as an employee or servant of Her Majesty, and that no person who may be engaged by the Recipient will be deemed to be an employee or servant of Her Majesty; and nothing in this Agreement shall be read or construed as constituting the Recipient or such person an employee or servant of Her Majesty.

11. Free Access to Project

The Recipient agrees to give reasonable access to the Minister to visit the project.

12. Project Reports

The Recipient agrees to provide the Minister with such information as the Minister may require concerning the activities and development of the project, such reports to be submitted on a date and in a form to be specified by the Minister. The Recipient further agrees to provide copies of all documents produced along with this report, if requested.

1. Définitions

(1) Sauf incompatibilité avec le contexte, dans les présentes dispositions générales:

a) Le terme "Ministre" désigne le ministre fédéral de la Justice ou son représentant dûment autorisé;

b) Le terme "Ministère" désigne le ministère fédéral de la Justice;

c) Le terme "convention" désigne l'entente de laquelle les présentes conditions générales font partie;

d) Les expressions du genre "dans les présentes", "par les présentes", "des présentes" et "en vertu des présentes" visent l'ensemble de la convention et non pas la seule clause dans laquelle elles apparaissent;

e) Le terme "bénéficiaire" désigne l'organisme ou la personne à qui la contribution est octroyée et qui doit exécuter la convention;

f) Le terme "vérification" désigne l'inspection des comptes et registres du bénéficiaire ou de tout autre document jugé pertinent dans les circonstances;

g) Le terme "projet" désigne les services exécutés ou à être exécutés par le bénéficiaire en application de la présente convention;

(2) En cas de contradiction entre les dispositions des présentes conditions générales et celles de la convention, ces dernières prévalent.

2. Mention du concours de l'État

Toute communication au public de renseignements relatifs à l'objet de la présente convention devra faire pleinement état de la contribution du ministère fédéral de la Justice.

3. Modifications

Les parties peuvent, d'un commun accord par écrit, modifier la présente convention.

4. Cession

Le bénéficiaire ne peut sans l'autorisation écrite du Ministre céder tout ou partie de la présente convention. Il peut toutefois se faire assister par des tiers pour l'exécution des obligations que celle-ci lui impose.

5. Membres de la Chambre des communes

Aucun membre de la Chambre des communes ne saurait participer à la convention ou aux avantages qui en découlent.

6. Avis

Tout avis relatif à la présente convention est valablement donné au bénéficiaire par lettre, télex ou télégramme expédié franc de port à celui-ci à l'adresse indiquée à la convention ou, à défaut, à celle figurant dans les dossiers du Ministre. Cet avis est réputé avoir été reçu par le bénéficiaire le jour où, selon le moyen utilisé, il aurait normalement dû lui parvenir.

7. Comptes

Le bénéficiaire consent à tenir des comptes et registres des sommes déboursées ou perçues aux fins de la présente convention, et à garder les factures, reçus et autres pièces comptables qui y sont afférents. Il fournit les rapports et prévisions financiers tels que stipulés dans la convention ou exigés par le Ministre.

8. Vérification

Les personnes dûment autorisées par le Ministre à procéder à des vérifications ont le droit de prendre connaissance, pendant les heures normales de travail, de tous comptes ou documents du bénéficiaire. Le bénéficiaire doit prendre toutes mesures propres à faciliter aux vérificateurs l'accomplissement de leur mission, et notamment leur communiquer tous renseignements qu'ils exigent. Le bénéficiaire est tenu de garder les comptes, pièces comptables et autres documents jusqu'à l'expiration d'un délai de trois ans à partir du moment où la convention cesse d'être en vigueur.

9. Rectification des comptes

Le Ministre consent à informer le bénéficiaire des résultats de toute vérification et, le cas échéant, à lui verser le plus tôt possible les sommes dues. Réciproquement, lorsqu'il ressort de la vérification dont on lui communique les résultats qu'il doit à quelque titre des sommes au Ministre, le bénéficiaire doit les lui verser sans délai.

10. Qualité du bénéficiaire et des personnes qu'il engage

Le bénéficiaire et les personnes qu'il engage n'ont pas qualité d'employés ou de fonctionnaires de Sa Majesté. Toute disposition contraire de la présente convention est réputée non écrite.

11. Droit de visite

Le bénéficiaire, dans la mesure du possible, permet au Ministre de visiter le projet.

12. Rapports

Le bénéficiaire consent à présenter au Ministre, dans les conditions de forme et de délais que celui-ci précise, tout rapport qu'il peut exiger sur le projet. Il fournit en outre, sur demande, copie de tout document joint à un tel rapport.

12. Evaluation

The Minister in his absolute discretion shall decide, within six months after signing this Agreement, whether an evaluation of the effectiveness and/or the efficiency of the activities of the Recipient shall be carried out. The Recipient agrees to cooperate with the Minister if he decides to have an evaluation carried out. This cooperation may include, but is not limited to, providing the Department or its contractors and/or employees:

(1) access to project staff and project records; and,

(2) such information as the Department may request during the term of this Agreement.

13. Legality

The Recipient shall ensure that the project or program will be operated or executed in compliance with all applicable laws and regulations whether federal or provincial of the jurisdiction in which the Recipient's activities are carried out.

14. Confidential Matters

It is understood and agreed that the Recipient will treat as confidential during as well as after the rendering of the services contracted for, any information of a character confidential to the affairs of Her Majesty to which he becomes privy as a result of the performance of this Agreement.

15. Liability

Her Majesty shall not be liable for any injury (including death) to the person, or for loss or damages to the property of the Recipient, occasioned by or in any way attributable to the services of the Recipient under this Agreement, unless such injury, loss or damage is caused by the negligence of an officer or servant of Her Majesty acting within the scope of his employment.

(JUSP172)

12. Évaluation

Le Ministre peut, dans les six mois de la signature de la présente convention, ordonner qu'il soit procédé à une évaluation de l'efficacité des activités du bénéficiaire. S'il use de cette faculté, le bénéficiaire est tenu de lui apporter toute sa collaboration, et notamment d'assurer aux agents et représentants du Ministère:

(1) Accès au personnel et aux dossiers du projet;

(2) Communication des informations que le Ministère peut exiger pendant la durée de la présente convention.

13. Respect des textes

Le bénéficiaire veille à ce que le projet soit exécuté dans le respect de tous textes législatifs fédéraux ou provinciaux applicables.

14. Secret

Le bénéficiaire est tenu au secret quant aux informations à caractère confidentiel sur les affaires de Sa Majesté auxquelles il a accès à l'occasion de l'exécution de la présente convention, et ce aussi bien pendant la durée de cette dernière qu'après son expiration.

15. Responsabilité de Sa Majesté

Sa Majesté ne répond ni des blessures, mêmes mortelles, ni des dommages matériels subis par le bénéficiaire à l'occasion de l'exécution de la présente convention, à moins que ces blessures ou dommages ne soient imputables à une faute commise par un employé ou fonctionnaire de Sa Majesté dans l'exercice de ses fonctions.

APPENDIX B

WINNIPEG VICTIM IMPACT STATEMENT PILOT PROJECT
A PROPOSAL FOR CONTINUED FUNDING
JUNE, 1987

Winnipeg Victim Impact Statement Pilot Project

A Proposal for Continued Funding.

The Winnipeg Victim Impact Statement Project, jointly funded by the Manitoba Department of the Attorney General and the Federal Department of Justice commenced operation on January 20, 1986. The initial funding agreement, which allowed for an 18 month pilot phase, terminates on July 20, 1987.

The Manitoba Victim/Witness Advisory Board is requesting continued funding from the Department of Justice to continue the Victim Impact Statement Project for an additional 9 1/2 months. The evaluation component of the project is expected to be compieted by March 31, 1988. An additional 9 1/2 months extension will allow the project to continue until April 30, 1988, at which time the evaluation will be compieted and the province of Manitoba will have the opportunity to review the evaluation with a view to ascertaining the best way to implement Victim Impact Statements in the province of Manitoba. With enabling legislation on the horizon, the need for a test project is evident.

The Winnipeg Victim Impact Statement Project was established to develop a program of introducing victim impact statements to the court. At the time of the implementation of the project, there was no established procedure to provide information to the court on the effects of the crime on the victim, and this information was not routinely provided to the court. The consequences of this was that information that could be relevant to sentencing may not have been made available to the sentencing judge.

A second value of the victim impact statement is that it may alter victims perceptions of their role in the court process. Previous studies have suggested that victims perceived their involvement in the court to be minimal and unwanted. One of the potential benefits of introducing victim impact statements is that victims will see their input as both desirable and useful to the court.

OBJECTIVES

1. Continue to develop and monitor a program where the effects of the crime on the victim can in a systematic manner, be available to the court at the time of sentencing.

2. By initiating contact with victims, improve the perception of victims on their role in the court process.

3. Determine the feasibility of developing a program that would give all victims of crime the opportunity to provide information to the court on the impact of the crime.

TARGET GROUPS

The preparation of Victim Impact Statements is limited to crimes against the person. In determining this criteria it was assumed that the seriousness of effect is greater for this category of crimes. The specific offences to be included are sexual assault (246.1, 246.1 and 246.3), aggravated assault (245.2), assault with a weapon or cause bodily harm (245.1) and robbery (302, non-commercial). Within these offences, cases will be used only where the offender is an adult and the victim is fourteen years of age or older. The restriction on the age of the victims is proposed in order to avoid the problem of relying on parents or others to provide information for the victim impact statement.

In situations where a target incident involves multiple victims, some of whom may be victims of a crime outside the target group, these victims are offered the opportunity to have a Victim Impact Statement prepared.

Wife abuse cases have been excluded from the pilot project.

In order to produce a research design that would allow an evaluation to determine the extent to which the first two objectives were met, with a view to expanding the project (objective #3), the creation of target and control groups occurred. To facilitate this, the use of victim impact statements is limited to three of the six City of Winnipeg Police districts, and the remaining three districts form the control group. This will enable a researcher to make systematic comparisons of the effects of the victim impact statements on sentencing and on the perceptions of victims on their involvement in the court process. Districts one, three and six were chosen to represent a geographical and socioeconomic cross section of Winnipeg.

PROCEDURE

The point of intervention by the Victim Impact Worker is immediately following the accused persons first court appearance. All police reports of the target incidents are placed aside by the City of Winnipeg Court Unit staff. These reports are made available to the Victim Impact Worker,who will then attempt to contact the victim for the purpose of explaining the program and setting up an interview. The contact with the victim will consist of a personal visit by the Victim Impact Worker where information is solicited from the victim using a standardized form (see Appendum A). The victim will

be informed that the information provided will be given to the judge, crown counsel and defense counsel. The victim will also be told that participation in preparing a victim impact statement is voluntary.

Prior to the preliminary hearing and any subsequent date on which a finding of guilt may occur, the Victim Impact Worker will again contact the victim and update the information originally obtained. Following a finding of guilt and prior to sentencing, the Victim Impact Worker will provide the court participants with a document describing the effects of the crime on the victim.

Please see Appendix B (Activity Identification)

COORDINATING PROJECT

The Victim Impact Worker will be an employee of the Manitoba Victim/Witness Advisory Board and will report to the Board on all matters pertaining to the project. It will be the responsibility of the Victim Impact Worker to keep records of all activities related to the project and present this information, in the form of a verbal report and written summary statistics, to the Board at their regular meetings. It will be the responsibility of the Board to provide direction to the Victim Impact Worker and to authorize any change(s) in the pilot project that the Board deems necessary.

PROJECT CONTINUATION

The Board is requesting that the pilot project be extended for an additional 9 1/2 months. This will enable the pilot project to continue until April 30, 1988, at which time the evaluation component will be completed,

and the results can be used to determine the most effective way of continuing the project. Please see proposed budget (Appendix C)

With an additional 9 1/2 months, more Victim Impact Statements can be prepared and more victims will be provided with information regarding the court process. The nature of the Victim Impact Statement project and its' involvement in the criminal court process means that considerable lead time is required before sufficient numbers of Victim Impact Statements have flowed through the court process. There are a large number of Victim Impact Statements waiting on the court process. With an extension, these Victim Impact Statements can be updated and tendered to the court; increasing the number of Victim Impact Statements through court. A significant sample size is necessary to obtain a clear picture of the program and the resulting implications of the project.

VICTIM IMPACT STATEMENT

NAME:_____ CRIME REPORT NO:_____

THE PURPOSE OF THIS FORM IS TO PROVIDE THE COURT WITH INFORMATION ON THE EXTENT AND SERIOUSNESS OF THE CRIME AS IT AFFECTS YOU, THE VICTIM.

PHYSICAL INJURIES: Questions asked regarding: injuries, illness and treatments or therapy received; permanent disability, long-term disability, or ongoing physical discomfort; medical attention; hospital stay; medicare coverage; other health insurance coverage; medical and anticipated medical expenses; missed time and anticipated financial loss.

PROPERTY LOSS/DAMAGE: Questions asked regarding: value and description of property damaged, lost or destroyed; insurance plan; coverage to what extent; difference between total loss and insurance coverage; missed time to attend to details of property loss/damage and anticipated financial loss, and receipts.

OVER

EMOTIONAL/PSYCHOLOGICAL IMPACT: Questions asked regarding: way incident has affected individual emotionally, psychologically or personally -- fears, ability to trust others, attitude towards life, confidence; changes in behaviour - where individual goes and how s/he goes there, when s/he goes out and type of activities s/he does; changes in relationships -- work, family and friends; fear for safety; counselling or therapy -- how long and cost; missed time from work and anticipated financial loss.

OTHER COMMENTS OR CONCERNS:

THE STATEMENTS MADE ARE TRUE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT THIS INFORMATION MAY BE SUBMITTED TO THE COURT ON MY BEHALF. I UNDERSTAND I MAY BE CALLED UPON TO TESTIFY SHOULD THE INFORMATION CONTAINED IN THE VICTIM IMPACT STATEMENT BE CHALLENGED.

SIGNATURE OF VICTIM:_____ DATE:_____

** THE INFORMATION CONTAINED IN THIS STATEMENT WILL BE USED TO PREPARE A DOCUMENT THAT WILL BE SUBMITTED TO THE COURT. A COPY OF THIS DOCUMENT WILL BE MAILED TO YOU. THE VICTIM IMPACT WORKER WILL CONTACT YOU PERIODICALLY TO UPDATE INFORMATION PERTAINING TO THIS DOCUMENT.

ACTIVITY IDENTIFICATION

Arrange meetings and information seminars with judges, police, crown counsel, defence counsel, and others involved with the criminal justice system to inter alia describe the program and the purpose of victim impact statements.

Initiate contact with victims of crime following receipt of information from the police. Contact will consist of a personal visit with the victim, at which time, upon explaining the program to the victim, information will be solicited by use of a standardized form.

Prior to the accused's preliminary hearing and any subsequent date on which a finding of guilt may occur, the victim impact worker will again contact the victim in order to update previous information provided by the victim.

Prepare a document describing the effects of the crime on the victim which will be provided to the judge, defence counsel and crown counsel prior to sentencing, but following a plea or finding of guilt.

Keep accurate records of all cases and other work related to the program, for the purpose of the preparation of written and oral reports.

Work closely with government research personnel in order to develop, analyze, evaluate, and if necessary, modify this program with the ultimate goal being to provide to the court in a systematic way, the effects of crime on victims of same.

Assist victims in understanding that they can provide information to the court on the impact of crime.

BUDGET

July 20, 1987 - April 30, 1988

	Department of Justice Canada	Department of the Attorney General - Manitoba
*Salary of Victim Impact Worker (Base salary of $1206.11 bi-weekly and total benefits of $1678.32: UIC benefits of $665.49; CPP benefits of 442.89 and Payroll tax levy of $569.94)	27,006.63	
Office Space		1,500.00
Office Equipment		4,000.00
Office Supplies		1,250.00
Mailing/Printing		2,250.00
Transportation Costs (23.4/km at 30 km/day)		1,382.94
Telephone (including long-distance)		1,250.00
Training Expenses		1,500.00
TOTAL	**$27,006.63**	**$13,132.94**

* Please note the proposed salary of the victim impact worker includes a cost of living increase of 3.8% and a merit increase of 3.64% bringing the proposed annual salary of the Victim Impact Worker from 29,150 to 31,359.00.

Department of Justice Canada
Ministère de la Justice Canada

Ottawa Canada
K1A 0H8

APPENDIX C

October 23, 1987 File No. 6116-24

Mr. John Guy, Chairperson
Manitoba Victim Witness Advisory Board
405 Broadway Avenue
6th Floor
Winnipeg, Manitoba
R3C 3L6

Dear Mr. Guy:

The purpose of this letter is to amend an Agreement dated January 3, 1986, between Her Majesty the Queen in Right of Canada represented herein by the Minister of Justice of Canada and Mr. John Guy, Chairperson of the Manitoba Victim Witness Advisory Board.

This letter, therefore, upon being signed by you for Manitoba Victim Witness Advisory Board and by a representative of Her Majesty, will amend the said Agreement dated January 3, 1986, for good and valuable consideration, in the manner following, that is to say:

The paragraph of the said Agreement dated January 3, 1986 entitled "MAXIMUM AMOUNT OF CONTRIBUTION" is hereby cancelled, and the following is substituted therefor:

MAXIMUM AMOUNT OF CONTRIBUTION

Her Majesty agrees to contribute towards the expenditures described in Appendix "A Revised" and incurred by the Recipient in the period from January 2, 1986 to March 31, 1988 for the purpose stated above an amount not to exceed sixty-six thousand eight hundred seventy-three dollars and fifty-four cents ($66,873.54).

The paragraph of the said Agreement dated January 3, 1987, entitled "PAYMENT (b)" is hereby cancelled, and the following is substituted therefor:

PAYMENT

(b) Additional payments, not exceeding in total $42,600.00 depending on the cash flow requirements of the project, and upon receipt and approval of interim financial statements or cash forecasts;

The paragraph of the said Agreement dated January 3, 1986, entitled "FINANCIAL STATEMENTS" is hereby cancelled, and the following is substituted therefor:

FINANCIAL STATEMENTS

The Recipient agrees to provide the Minister no later than April 15, 1988 with a detailed Financial Statement of Revenue and Expenditures for the project, in such form as the Minister may prescribe, for the period from January 2, 1986 to March 31, 1988 accompanied by photocopied or original vouchers in proof of payment of the claimed expenses. The statement and vouchers are to be addressed to Paul Sonnicksen, Senior Program Manager, Consultation and Development Section, Department of Justice, Justice Building, 239 Wellington Street, Ottawa, Ontario, K1A 0H8.

The paragraph of the said Agreement dated January 3, 1986, entitled "SPECIAL CONDITIONS (A)" is hereby cancelled, and the following is substituted therefor:

SPECIAL CONDITIONS

The Recipient agrees that:

A) Activity reports be completed on a quarterly basis and a comprehensive final report be completed at the end of the project and two copies be provided to Mr. Paul Sonnicksen, Senior Program Manager, Consultation and Development Section, Department of Justice, Justice Building, 239 Wellington Street, Ottawa, Ontario, K1A 0H8.

The paragraph of the said Agreement dated January 3, 1986, entitled "APPENDICES" is hereby cancelled, and the following is substituted therefor:

APPENDICES

The attached "Department of Justice - General Conditions - Contributions" (FORM JUSP172), appendices "A Revised" and "B" form part of this Agreement.

All other terms and conditions remains the same.

.../3

If you agree with the foregoing, please sign hereunder and return the original of this letter to the Grants and Contributions Audit Section, Room 939, Justice Building, Ottawa, Ontario, K1A 0H8.

for Minister of Justice

The above terms and conditions are accepted.

Signature _____ Date 2nd 5/87

APPENDIX "A REVISED"

to the Agreement between the
Department of Justice, Canada and
the Manitoba Victim Witness Advisory Board

BUDGET

January 2, 1986 to March 31, 1988

	Dept. of the Attorney General of Manitoba	Dept. of of Justice	Total
Salary and Benefits of Victim Impact Worker	$ -	$66,873.54	$66,873.54
Office Space	3,900.00	-	3,900.00
Telephone	2,150.00	-	2,150.00
Office Equipment	5,500.00	-	5,500.00
Stationary, brochures and postage	5,000.00	-	5,000.00
Travel Expenses	5,342.94	-	5,342.94
Business Insurance for Car	300.00	-	300.00
Training Expenses	1,500.00	-	1,500.00
TOTAL	$23,692.94	$66,873.54	$90,566.48

The contribution of the Department of Justice of Canada will be limited to the lesser of $66,873.54 or the actual and approved costs incurred, less monies received from other sources.

Proposal For A Pilot Project on The Use of Victim Impact Statements

Introduction

The Manitoba Victim/Witness Advisory Board is requesting financial support from the Department of Justice to establish a pilot project to develop a program of introducing victim impact statements to the court. At the present time, there is no established procedure to provide information to the court on the effects of the crime on the victim. Although a judge may become informed of these effects from evidence at trial or from the crown attorney, there is no system that routinely provides this information to the court. The consequence of this is that information that could be relevant to sentencing may not be available to the judge.

A second value of the victim impact statement is that it may alter victims perceptions of their role in the court process. Previous studies have suggested that victims perceive their involvement in the court to be minimal and unwanted. One of the potential benefits of introducing victim impact statements is that victims will see their input as both desirable and useful to the court.

Objectives

1. Develop a program where the effects of the crime on the victim can in a systematic manner, be available to the court at the time of sentencing.
2. By initiating contact with victims, improve the perception of victims on their role in the court process.

3. Determine the feasability of developing a program that would give all victims of crime the opportunity to provide information to the court on the impact of the crime.

Target Groups

In designing the project, the Board endeavoured to keep the activities to a manageable size by limiting the types of crimes that would be selected. The decision was made to limit the use of impact statements to crimes against the person. This decision is based on the assumption that the seriousness of effect is greater for this category of crimes. Although the victims of property crimes experience trauma, there is no physical injury and the degree of trauma is typically less than for offences such as sexual assault. The specific offences to be included are sexual assault (~~246.1, 246.2~~ and 246.3), aggravated assault (245.2), assault with a weapon or cause bodily harm (245.1) and robbery (302, non-commercial). Within these offences, cases will be used only where the offender is an adult and the victim is fourteen years of age or older. The restriction on the age of the victim is proposed in order to avoid the problem of relying on parents or others to provide information for the victim impact statement.

The committee has decided to exclude wife abuse cases from the pilot project. There are two reasons for this decision. First the volume of cases that fall within the above offences (300 in 1984) increases the total number of cases to an unrealistic workload for one Victim Impact worker. Second, there is a concern that the Victim Impact worker may aggravate an already vulnerable situation if he or she visits a home where the victim and the offender are living together. The Board has discussed this issue with the

Provincial Coordinator of Wife Abuse Services and the Director of the Manitoba Wife Abuse Committee. It should be noted that the Board hopes that eventually all victims of crime will be included in the Victim Impact Program.

Arising from Objective #3 listed earlier, one of the concerns of the Board is that the project be designed in a manner that would allow an evaluation to determine the extent to which the first two objectives will be met. In order to facilitate this, it was agreed to limit the use of victim impact statements to three of the six police districts and treat the remaining three districts as a control group. This will enable a researcher to make systematic comparisons of the effects of the victim impact statments on sentencing and on the perceptions of victims on their involvment in the court process. Districts three, four and six were chosen to represent a geographical and socioeconomic cross section of Winnipeg. Using Winnipeg Police Department statistics from 1984, it is estimated that the number of offences where an individual has been charged that fall within the category of crimes against the person in the three police districts selected would be approximately 350 to 400. This is a rough estimate since Winnipeg police statistics do not differentiate between offences committed by adults and juveniles.

Procedure

The point of intervention by the person responsible for obtaining victim information will be immediately following receipt of information from the police that someone has been charged with the offence. The Detective Sergeants in charge of crime in the three police districts selected will forward the police reports of all cases of crimes against the person where an individual has been charged to Constable Dionne, head of the Victim

*Amended Information obtained from Crown Attorney and the Court Clerk

Assistance program. The Victim Impact worker will have access to these reports, as well as any Victim Services reports on the case, and will be expected to contact the victim within one week of an individual being charged. The Winnipeg Police Department has requested that all victims targeted for victim impact statements be initially contacted by Constable Dionne to determine if they have any objections to providing this information. The contact with the victim will consist of a personal visit by the Victim Impact worker where he or she will solicit information from the victim using a standardized form (see Appendix A).

Prior to the preliminary hearing and any subsequent date on which a finding of guilt may occur, the Victim Impact worker will again contact the victim and update the information originally obtained. It will be the responsibility of the crown attorneys to notify the Victim Impact worker of the date of the preliminary hearing and subsequent dates. The victim will be informed that the information provided will be given to the court and will be available to the judge and to the defense counsel. The victim will also be told that participation in preparing a victim impact statement is voluntary. Following a finding of guilt and prior to sentencing, the Victim Impact worker will provide the judge with a document describing the effects of the crime on the victim.

Coordinating Project

The Victim Impact worker will be an employee of the Manitoba Victim/Witness Advisory Board and will report to the Board on all matters pertaining to the project. It will be the responsibility of the Victim Impact worker to keep records of all activities related to his/her work and present this information, in the form of a verbal report and written summary

statistics, to the Board at their regular meetings. It will be the responsibility of the Board to provide direction to the Victim Impact worker and to authorize any change(s) in the pilot project that the Board deems necessary.

Initiating Project

In order for the project to be effective, it will be necessary to inform all of the key players in the criminal justices system of the plan to implement victim impact statements. This will include the Detective Sergeants, the crown attorneys, the judges and defence lawyers. One of the first tasks of the Victim Impact worker will be to organize meetings and information seminars with the above groups. These meetings will be structured to describe the new program and answer questions and concerns about victim impact statements.

Length of Project

The Board is requesting that the pilot project be conducted for a period of three years. Although this may seem to be a lengthy period for a pilot project, there are two reasons for this request. First, given the novelty of the program and the degree of coordination that will be required from different key actors in the system, it is expected that there will be some time lag before the program is running smoothly. By allowing the program to run three years, the Board will be better able to identify any problems that may arise and be able to make necessary adjustments.

Second, given the anticipated number of victims that will be contacted within a one year period, it would be valuable for the purposes of evaluating the program if a larger sample of victims were available to use as a data base. Similarly, more confidence could be given to findings on sentencing effects if a data base representing a longer time frame were available. It is

possible, for example, that when victim impact statements are first introduced to the court, judges may weight them more heavily in determining the sentence, since it is essentially new information to the court. After a period of twelve to eighteen months, however, the influence of the statements may decrease due to their routinization.

Evaluation

In order to evaluate the value of victim impact statements, the Board is requesting that the Department of Justice conduct an evaluation of the pilot project. Three areas that should be addressed by this evaluation are (1) the feasibility of expanding victim impact statements to all victims, (2) the effect of the procedure on victims' perception of their role in the criminal justice system and (3) the effect of victim impact statements on sentencing.

In addressing the latter two issues, the research should take advantage of the control groups that have been created in the design of the pilot project. This will allow the development of a research design that can rule out most alternative explanations for any findings linked to the presence of victim impact statements.

It is also requested that involvement of the research personnel start at the same time the project is initiated. This will enable the research team to have input into the development of a record keeping system for the Victim Impact worker and any changes required during the life of the project will involve the participation of the research team.

VICTIM IMPACT STATEMENT

Victim _____ Crime Report # _____

Accused _____ Date of Birth _____

Charges _____

Court Dates _____

_____

Statement Dates _____

Statement Taken By _____

1) PHYSICAL INJURY

a) If you suffered any physical injury as a result of this crime please decribe the injuries incurred.

b) Is there any permanent disability or on-going physical discomfort as a result of your injury? Please describe.

c) If your injuries caused you to miss time from work, please indicate how much time you missed and how much money (if any) was lost by you in wages.

d) Were there medical expenses (such as prescription drugs) which were not covered by insurance and/or future medical expenses anticipated which will not be covered by any insurance plan (such as Medicare)? Please describe.

2) PROPERTY DAMAGE

a) What property was damaged or destroyed as a result of this crime?

b) What was the total value of the damaged or destroyed property?

c) What was the cost of replacement or repair? (Please attach any bills, receipts, cancelled cheques or estimates.)

d) If you were insured, did your insurance reimburse you for the financial losses which you incurred? If so, to what extent?

3) EMOTIONAL IMPACT

a) Describe any psychological or psychiatric services which may have been or may be required by you as a result of this offence.

b) Have any changes occurred with respect to your personal welfare or familial relationships as a result of this offence? Please describe.

4) ADDITIONAL INFORMATION

If there is any information related to the medical, economic or emotional impact of this crime that you would like to provide to the Court, please describe.

The statements given in this report are true to the best of my knowledge. The victim has been advised that the information contained herein may be presented to the Court on his/her behalf, and if so, will be submitted to Defense counsel and the Crown attorney.

SIGNATURE _____

APPENDIX E

VICTIM IMPACT WORKER

The Department of the Attorney General of Manitoba requires a person for 17 months, under contract, to prepare victim impact statements for court; working with the Manitoba victim/witness advisory committee. Salary, $30,000.

Qualifications: knowledge of the criminal justice system essential; interpersonal communication skills; drivers license and use of own car; writing skills; some typing; Bachelor of Arts or equivalent.

Send resumes to:

Mr. John Guy, Assistant Deputy Attorney General, 5th Flr., 405 Broadway, Winnipeg, R3C 3L6, no later than November 14, 1985.

APPENDIX F

SCHEDULE "A"

Victim Impact Worker Duties and Responsibilities:

1. First and foremost, arrange meetings and information seminars with judges, police, crown counsel, defence counsel, and others involved with the criminal justice system to inter alia describe the program and the purpose of victim impact statements.

2. Initiate contact with victims of crime immediately, or, at the outset, within one (1) week of the worker receiving information from the police. The contact will consist of at least one (1) personal visit on the victim at which time, upon explaining the program to the victim, information will be solicited by use of a standardized form.

3. Prior to the accused's preliminary hearing and any subsequent date on which a finding of guilt may occur, the worker will again contact the victim in order to update the information provided by the victim earlier.

4. Prepare a document to be provided to the judge prior to sentencing describing the effects of the crime on the victim.

5. Keep accurate record of all cases and other work related to the program, for purposes of presenting reports both written and oral, when required by the Manitoba Victim/Witness Advisory Board or its Chairperson.

6. Work closely with the members of the Board and government research personnel in order to develop, analyze, evaluate, and if necessary, modify this program with the ultimate goal being to provide to the court in a systematic way, the effects of crime or victims of same.

7. Assist victims in understanding that they can provide information to the court on the impact of crime.

PROPERTY LOSS/DAMAGE: Questions asked regarding: value and description of property damaged, lost or destroyed; insurance plan; coverage to what extent; difference between total loss and insurance coverage; missed time to attend to details of property loss/damage and anticipated financial loss, and receipts.

OVER

APPENDIX G

VICTIM IMPACT STATEMENT

NAME:_____ CRIME REPORT NO:_____

THE PURPOSE OF THIS FORM IS TO PROVIDE THE COURT WITH INFORMATION ON THE EXTENT AND SERIOUSNESS OF THE CRIME AS IT AFFECTS YOU, THE VICTIM.

PHYSICAL INJURIES: Questions asked regarding: injuries, illness and treatments or therapy received; permanent disability, long-term disability, or ongoing physical discomfort; medical attention; hospital stay; medicare coverage; other health insurance coverage; medical and anticipated medical expenses; missed time and anticipated financial loss.

PROPERTY LOSS/DAMAGE: Questions asked regarding: value and description of property damaged, lost or destroyed; insurance plan; coverage to what extent; difference between total loss and insurance coverage; missed time to attend to details of property loss/damage and anticipated financial loss, and receipts.

OTHER COMMENTS OR CONCERNS:

THE STATEMENTS MADE ARE TRUE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT THIS INFORMATION MAY BE SUBMITTED TO THE COURT ON MY BEHALF. I UNDERSTAND I MAY BE CALLED UPON TO TESTIFY SHOULD THE INFORMATION CONTAINED IN THE VICTIM IMPACT STATEMENT BE CHALLENGED.

SIGNATURE OF VICTIM:_____ DATE:_____

** THE INFORMATION CONTAINED IN THIS STATEMENT WILL BE USED TO PREPARE A DOCUMENT THAT WILL BE SUBMITTED TO THE COURT. A COPY OF THIS DOCUMENT WILL BE MAILED TO YOU. THE VICTIM IMPACT WORKER WILL CONTACT YOU PERIODICALLY TO UPDATE INFORMATION PERTAINING TO THIS DOCUMENT.

EMOTIONAL/PSYCHOLOGICAL IMPACT: Questions asked regarding: way incident has affected individual emotionally, psychologically or personally -- fears, ability to trust others, attitude towards life, confidence; changes in behaviour - where individual goes and how s/he goes there, when s/he goes out and type of activities s/he does; changes in relationships -- work, family and friends; fear for safety; counselling or therapy -- how long and cost; missed time from work and anticipated financial loss.

OTHER COMMENTS OR CONCERNS:

APPENDIX H

VICTIM IMPACT STATEMENT

VICTIM:

ACCUSED:

CR#:

DATE OF INCIDENT:

DATE OF INTERVIEW:

Summary of information collected on Victim Impact Statement Interview form. Information is presented in such a way that there is no doubt that it is the victim speaking, ex. the victim stated, said, noted, etc. The Victim Impact Statement does not contain any of the victim impact worker's opinions, nor does it address sentencing. It simply addresses the physical, financial, and emotional impact of the crime upon the victim.

Theresa Clarke, B.A., B.S.W.
Victim Impact Worker

Please be advised that a copy of this report has been sent to the victim.

APPENDIX I

VICTIM'S NAME: _____
ADDRESS: _____
PHONE NUMBER: _____
CR#: _____
ACCUSED: _____
BIRTHDATE: _____
CHARGES: _____
_____
COUNSEL: _____
DATE OF OFFENCE: _____

CHECKLIST

FIRST DAY IN COURT: _____

REPORT OBTAINED: _____

PHONED FOR INTERVIEW: _____ STAMP UPDATE: _____

INTERVIEW DATE, TIME & LOCATION: _____

INTERVIEW COMPLETED: _____

INITIAL VIS COMPLETED: _____ STAMP UPDATE: _____

LETTER & COPY OF VIS SENT TO VICTIM: _____

UPDATES MADE: _____ INFO ATTACHED TO VIS: _____

_____ _____

_____ _____

_____ _____

_____ _____

POCKET PLACEMENT DATE: _____

REMAND DATES: _____ VICTIM NOTIFIED: _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

PRELIMINARY HEARING: _____ _____

TRIAL DATES: _____ _____

DATE OF SENTENCING: _____ VICTIM'S PRESENCE: _____ CROWN NOTIFIED: _____

DISPOSITION: _____

_____

_____

_____

VICTIM NOTIFIED OF DISPOSITION: _____ PRESIDING JUDGE: _____

CROWN'S OPINION REGARDING VIS: _____

_____

_____

TRANSCRIPT OF JUDGEMENT ORDERED: _____

VICTIM:

ADDRESS:

PHONE #

ACCUSED:

CHARGE:

VIS. YES_____ NO_____

IF NO, WHY?

REMANDS:

DISPOSITION:

ACCUSED:

CHARGED:

VICTIM

CR#:

APPENDIX J

Canada Manitoba

Victim Impact Statement Project

A project jointly funded by the Federal Department of Justice
and the Manitoba Department of the Attorney General

5th Floor, Woodsworth Building, 405 Broadway
Winnipeg, Manitoba, CANADA R3C 3L6
(204) 945-0899

Date

Name
Address
City, Province
Postal Code

Dear

As a victim of a crime, you are entitled to have a Victim Impact Statement prepared. A Victim Impact Statement allows the victim of a crime; such as yourself, the opportunity to make known to the court how you have been affected by the crime.

The Federal Department of Justice and the Manitoba Department of the Attorney General are sponsoring this project which will allow the victim to make known to the court the physical, financial and emotional impact of the crime upon themselves. It is prepared by myself, the Victim Impact Worker, following a short, personal interview with you. A Victim Impact Statement is voluntary, does not cost, and if prepared is submitted to the crown counsel, defense counsel and the judge, after the individual charged with the crime has been found guilty. It will allow the court to know, prior to sentencing the accused person, the full extent of your victimizatiton.

I would like to speak with you, unfortunately I have been unable to contact you. Would you please give me a phone call at 945-0899. Thank you.

Sincerely,

Theresa Clarke
Victim Impact Worker

Canada Manitoba

Victim Impact Statement Project

A project jointly funded by the Federal Department of Justice
and the Manitoba Department of the Attorney General

5th Floor, Woodsworth Building, 405 Broadway
Winnipeg, Manitoba, CANADA R3C 3L6
(204) 945-0899

Date

Name
Address
City, Province
Postal Code

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I would like to speak with you, unfortunately I have been unable to contact you. I will continue to try to reach you by phone, but would appreciate it if you would give me a phone call? I can be reached at 945-0899. Thank you.

Sincerely,

Theresa Clarke
Victim Impact Worker

Canada Manitoba

Victim Impact Statement Project

A project jointly funded by the Federal Department of Justice
and the Manitoba Department of the Attorney General

5th Floor, Woodsworth Building, 405 Broadway
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(204) 945-0899

Date

Name
Address
City, Province
Postal Code

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Enclosed, you will find a form that you can fill out, should you wish to inform the crown counsel, defense counsel and sentencing judge, how the crime has effected your life. Once the form has been completed, please return it in the enclosed self-addressed envelope.

With the information contained on the form, a report will be prepared and will be presented to the court following a finding of guilt. It is one of the pieces of information that the judge may consider when sentencing the accused person.

If you have any questions or concerns, I can be reached at (204) 945-0899. Please do not hesitate to call if you require any assistance in the preparation of the Victim Impact Statement

Sincerely,

Theresa Clarke
Victim Impact Worker

Enclosure

Canada Manitoba

Victim Impact Statement Project

A project jointly funded by the Federal Department of Justice
and the Manitoba Department of the Attorney General

5th Floor, Woodsworth Building, 405 Broadway
Winnipeg, Manitoba, CANADA R3C 3L6
(204) 945-0899

Date

Name
Address
City, Province
Postal Code

Dear

Enclosed, please find a copy of the Victim Impact Statement that will be submitted to the court on your behalf. Should you have any questions or concerns regarding the Victim Impact Statement, feel free to contact me at 945-0899.

I will be contacting you periodically to keep the information in the statement current. Thank you for taking the time to help me prepare the Victim Impact Statement.

Sincerely,

Theresa Clarke
Victim Impact Worker

Enclosure

Canada Manitoba

Victim Impact Statement Project

A project jointly funded by the Federal Department of Justice
and the Manitoba Department of the Attorney General

5th Floor, Woodsworth Building, 405 Broadway
Winnipeg, Manitoba, CANADA R3C 3L6
(204) 945-0899

Date

Name
Address
City, Province
Postal Code

Dear

RE: VICTIM IMPACT STATEMENT
VICTIM:
ACCUSED:
SENTENCING DATE:

The Department of the Attorney General of Manitoba and the Federal Department of Justice are sponsoring the Victim Impact Statement Project which will introduce Victim Impact Statements to the Courts at the time of sentencing. It is felt that the Victim Impact Statement may contain some information that may be relevant in sentencing the accused person.

Enclosed, please find a Victim Impact Statement that has been prepared for submission to the Courts. A copy of the Victim Impact Statement has been given to all parties involved in the court process - the defense counsel, the crown attorney and the judge.

As this is a pilot project, any feedback would be greatly appreciated. If you have any questions or concerns, I can be reached at 945-0899. I would appreciate hearing from you.

Sincerely,

Theresa Clarke
Victim Impact Worker

Enclosure

APPENDIX K

Manitoba

Memorandum

Date

To

From

Telephone

Subject

Please be advised that a Victim Impact Statement has been prepared for the victim in the above case and can be obtained following a finding or plea of guilty or an indicated guilty plea by contacting the writer at 0899 or the general office at 0220 or 2953.

Thankyou,

Theresa Clarke
Victim Impact Worker

Manitoba
Victim/Witness
Advisory Board

PROGRAM FUNDED THROUGH THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF THE ATTORNEY-GENERAL OF MANITOBA

A
FEDERAL-PROVINCIAL
COST-SHARED
PROGRAM

FURTHER INFORMATION
CAN BE OBTAINED
BY WRITING OR PHONING
THE VICTIM IMPACT WORKER

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Victim Impact Statement Project

APPENDIX L

Victim Impact Worker
5th Floor, Woodsworth Building
405 Broadway
Winnipeg, Manitoba
R3C 3L6

TELEPHONE: 945-0899

MG-13680

Victim Impact Statement Project

Objectives:

1. To develop a program where the effects of crime on the victim can, in a systematic manner, be available to the court at the time of sentencing.
2. By initiating contact with victims, improve the perception of victims on their role in the court.
3. Determine the feasability of developing a program that would give all victims of crime the opportunity to provide information to the court on the impact of the crime.

The project will deal with victims of crime in cases where an offender has been charged with one of the following offences:

Sexual Assault (246.1, 246.2 & 246.3)
Aggravated Assault (245.2)
Assault with a weapon or cause bodily harm (245.1)
Robbery (302, non-commercial)

Within these offences, Victim Impact Statements will only be prepared in cases where the offender is an adult and the victim is fourteen years of age or older. Wife abuse cases will be excluded from the project, simply because of the large number of such cases.

Preparation of Victim Impact Statements will be limited to crimes occurring in Police Districts #1, #3 and #6. This is to ensure the research design.

What is a Victim Impact Statement?

- It is a statement voluntarily made by the victim of the crime, to express to the judge, crown counsel and defense counsel, the effect the crime has had on an individual.
- Areas addressed by the Victim Impact Statement may include:
  - i) The medical impact of the crime
  - ii) The financial impact of the crime
  - iii) The emotional impact of the crime

How is a Victim Impact Statement Prepared?

- The victim will be contacted by a Victim Impact Worker.
- The victim will be asked if s/he wishes to have a Victim Impact Statement prepared for submission to the court.
- If the victim wishes to submit a Victim Impact Statement, s/he will be visited by a Victim Impact Worker who will seek information from the victim as to the effects of the crime on the individual.
- Prior to the trial, the victim will again be contacted by the Victim Impact Worker to find out if there are any changes in circumstance with respect to the victim, since the preparation of the first Victim Impact Statement. This is to keep the information contained in the Victim Impact Statement current.

What Happens to the Victim Impact Statement?

- The Victim Impact Statement will be given to the crown counsel, defence counsel and the judge, after a finding of guilty but prior to sentencing the accused. It will be one of the pieces of information that the judge may consider before handing down an appropriate sentence.
- The victim may be called upon to testify, should the information contained in the Victim Impact Statement be challenged.

For Further Information Contact:

Victim Impact Worker
5th Floor, Woodsworth Building
405 Broadway
Winnipeg, Manitoba
R3C 3L6

TELEPHONE: 945-0899

APPENDIX M

PROTOCOL

1) Staff from the Winnipeg Police Department Court Unit, following an accused person's first court appearance, will pull the reports for the following offences:

SEXUAL ASSAULT	246.1
	246.2
	246.3
AGGRAVATED ASSAULT	245.2
ASSAULT WITH A WEAPON or ASSAULT CAUSE BODILY HARM	245.1
ROBBERY (Non-commercial)	302

2) Victim Impact Statement worker will separate reports into 2 piles - control and target group.
Control group will consist of the designated charges (Listed above) in police districts #2, #4, and #5.
Reports from the target group (Districts #1, #3 and #6) will be stamped on the pink copy of the court assistance report (P'6) with the following stamp:

VIS YES _____ NO _____
INITIAL CONTACT: _____
UPDATE: _____

The reports will then be photocopied by the Victim Impact Statement worker and returned to Court Unit staff.

3) The Victim Impact Statement worker will obtain a copy of the daily summary of police incidents from the Winnipeg Police Victim Services Unit. This is to doublecheck that all designated incidents are identified.

4) A copy of the "A" court docket will be provided to the Victim Impact Statement worker so as to keep track of the remand dates of the accused persons involved in the target group incidents.

5) Photocopies of the police reports will be placed in a brought forward file, corresponding to the accused's remand date, in a locked cabinet in the Victim Impact Statement worker's office.

6) The Victim Impact Statement worker will contact the victim within one week following the receipt of a photocopy of the police report. Once a victim has been contacted, the Yes/No portion of the Victim Impact stamp will be filled out. Yes - if the victim has agreed to provide a Victim Impact Statement. No - if the victim has not agreed to provide a statement.

7) If the victim has agreed to provide a Victim Impact Statement, an interview date will be set up with the victim. Once the information on the questionnaire has been obtained and the Victim Impact Statement prepared, the date will be recorded on the Initial Contact area of the Victim Impact Statement stamp located on the pink copy of the court assistance report. The Victim Impact Statement will be kept with the photocopy of the police report in the Victim Impact Statement worker's office. A copy of the Victim Impact Statement will be sent to the victim.

. . ./2

8) Prior to a preliminary hearing or any date on which a plea of guilty may occur, the victim will again be contacted and the information regarding the Victim Impact Statement will be updated. The date will be recorded on the Update area of the Victim Impact Statement stamp located on the pink copy of the court assistance report. The updated information will be kept with the Victim Impact Statement in the Victim Impact Statement worker's office.

9) The original document and the updated information will be distributed to the crown counsel, the judge, and the defence counsel after a finding of guilty, but prior to sentencing.

APPENDIX N

VICTIM IMPACT STATEMENTS

A Valid Consideration in Sentencing

It is believed that a Victim Impact Statement is a valid consideration for sentencing. The sentencing of an individual found guilty of a crime is a difficult process in which one of the purposes is the protection of society. In considering the appropriateness of a sentence, two aspects must be considered: (R. v. Iwaniw & Overton) (1959), 127 C.C.C. (Man. C.A.) at page 597-598.

> First, the deterrent aspect, which serves a dual purpose: a) Individual, in that the object is to teach the offender a lesson to deter him from repeating his offence; b) General, to demonstrate to potential offenders the consequences of committing a similar offence. In this connection the sentence is the registration of the moral obloquy with which society regards the crime.
>
> Second, the reformative aspect which has for its purpose the rehabilitation of the offender by developing in his mind a recognition of his obligation to be a law-abiding citizen. The public interest is best served if and when the offender is induced to turn to honest living as a result of such convincement.
>
> The first mentioned aspect requires consideration of the offence committed, the second, the reformation of the offender who committed it.

With reference to the first mentioned aspect which "requires consideration of the offence committed" a Victim Impact Statement would be relevant, as it would provide further information for consideration as to the offence committed.

Victim Impact Statements would provide factual information to the courts as to the impact of the offence upon the individual. It would provide the court with a wider picture of the offence with the provision of relevant information concerning the physical, financial and emotional injury to the victim of the offence. It is therefore submitted that a Victim Impact Statement is a valid consideration for sentencing.

To continue with the R. v. Iwaniw case, seven principles are listed, which are to be considered when determining an appropriate sentence in any given case. For the purposes of this brief, principles #3 and #7 will be addressed.

> #3 - The gravity of the crime committed, in regard to which the maximum punishment provided by statute is an indication.

The Criminal Code of Canada provides for a maximum punishment for each offence. The gravity of the offence is one factor which the legislators (society as a whole) take towards a particular offence. However, because leeway is provided within the Code as to variations in sentencing as a whole, the gravity of the offence committed against society and the aggravating factors associated with each individual offence must be considered.

Whilst parliament has provided a maximum punishment depending upon the gravity of the offence upon society, it is necessary for the severity of the actions against the victim and ultimately society to be examined. It would therefore be valid to consider a Victim Impact Statement when determining the seriousness of the crime, as the seriousness of the crime can be measured in part by its detrimental effects upon the victim.

> #7 - Any recommendation of the trial judge, any pre-sentence or probation official's report, or any mitigating or other circumstances properly brought to the attention of the court.

Sentencing principle #7 suggests that other circumstances brought to the attention of the court shall be considered when sentencing an individual. A Victim Impact Statement would detail these other circumstances, by addressing the effect of the crime upon the victim, and would provide the judge with relevant information to be considered during the sentencing process.

A Victim Impact Statement would present the trial judge with information as to the aggravating circumstances of the crime, by detailing the effect of the crime upon the victim. In R. v. Webb (1971), V.R. 2147, the Court of Appeal of Victoria, Australia, said:

> "It is always open to a judge to have regard to the fact that no evil effect resulted from the crime to a victim. That is a common occurrence and a fact properly taken into account. But

> conversly, a learned judge is equally entitled in our view, to have regard to any detrimental, prejudicial, or deleterious effect that may have been produced on the victim by the commission of the crime."

Any additional information regarding the crime appears to be welcomed by the courts during the sentencing process. The introduction of Victim Impact Statements would provide relevant and necessary information to the learned judge.

The aim of the Victim Impact Statement Project is to provide such information systematically to the Courts. The learned judge may use the information provided in any manner in which he/she sees fit. It is suggested that a Victim Impact Statement may be one of the factors the judge may consider when sentencing the accused person. However, how much weight the learned judge places upon the information contained in the Victim Impact Statement will obviously be left entirely to his/her discretion.

A brief look at judgments handed down in Manitoba and throughout other jurisdictions in Canada illustrate the fact that the courts are considering the effect of the crime upon the victim as one of the factors in determining the appropriate sentence.

It would be trite to say that the physical injuries sustained by the victim should be taken into consideration by the court. It is obvious from the few cases detailed below that as a matter of course, the court does consider the nature of the injuries resulting from the crime.

> R. v. Tom, Unreported, (B.C.C.A.) No. 003915, Nov. 1, 1985. Charge of aggravated assault. Court noted that the victim was left permanently disabled. Her lungs had been damaged and she suffered swelling to the brain which caused brain damage. The victim would require institutional care for the rest of her life.

> R. v. Lavoie (1985) A.R. 269 (Alta. C.A.) Charge of causing bodily harm by criminal negligence. The court considered the injury to the victim who was rendered a quadriplegic as a result of the accident.

A. IMPACT

The following cited cases emphasize the fact that the impact of the crime upon the victim has been considered by the courts.

R. v. Docs (1981) 23 C.R. (3d) 56 (Ont. C.A.) Accused raped his step-daughters. The court considered that the incidents resulted in physical and deep emotional injury to the victims.

R. v. McKenzie, Unreported, (Man. C.A.) Jan. 25/85. Charge of sexual assault on 7 year old girl. The Appeal Court noted that the trial judge stated he observed the terrible trauma the victim suffered even in attempting to testify about the incident.

R. v. Jean, Unreported, (B.C.C.A.) Vancouver No. 002547, Nov. 14/84. Charge of sexual intercourse with a female under fourteen. The court took note of the fact that the child had been traumatized.

R. v. Franklin, Unreported, (Ont. Co. Ct). Milton No. 2945/84, Oct. 29/84. Charge of incest where a knife was held to the daughter's throat. The court considered that the daughter was deeply affected by the incident.

R. v. A.(B. , (1984) N.W.T.R. 201 (S.C.). Charge of incest. Court considered the fact that the daughter suffered depression and had attempted suicide due to the offence.

R. v. Wells (1972), 7. C.C.C. (2d) 480 (Ont. P.C.). On a charge of inducing persons to enter Canada illegally, the court considered the adverse effects on the students from Hong Kong who were involved when determining the appropriate sentence.

B. LACK OF IMPACT

In the cases cited below, the lack of injury or lack of impact on victim was specifically noted.

R. v. Genaille (1982) 17 Sask. R.268

(C.A.). Charge of rape on step-daughter. The court noted that no apparent physical or psychological trauma was inflicted on the victim.

R. v. Anderson (1979), 2 Man. R. 86 (C.A.). Charge of rape. The court noted that the incident involved no lasting physical injury to the complainant.

R. v. Thorton Bradley and Gautreau (1981) 15 Man. R. (2d) 2(C.A.). Charge of rape. Court remarked that the complainant was not injured.

R. v. Peskoonas (1982), 16 Man. R. (2d) 358 (C.A.). Charge of rape. The court remarked that the victim had not suffered any injury or "substantial damage".

The impact of the crime upon the victim is not an essential factor in the actual charge. However, the following cited cases address the lack of such information.

R. v. Shanower (1972) 8 C.C.C. (2d) 527 (Ont. C.A.). Charge of rape on a 15 year old girl. The court commented that very little was mentioned of the impact of the incident on the young girl.

R. v. Beere (1982) 3 C.C.C. (3d) 304 (Alta. C.A.). Charge of sexual intercourse with female under 14. The court commented that expert evidence of the degree of harm suffered by the child is useful in these cases.

In addition, in a judgment pronounced February 6, 1986, R. v. Fuesser (attached) which reduced the sentence from 3½ years to 30 months, Justice Huband, Court of Appeal of Manitoba, noted that "there is an absence of evidence as to the impact on the victim".

If the absence of impact is taken into consideration by the courts, conversely, the evidence of such impact should be considered by the courts.

At the present time, there is no legislation

which directly addresses the concept of Victim Impact Statements. However, one can look to the provisions of the Young Offenders Act to provide an example as to the relevance of Victim Impact Statements. Section 14(2)(b) of the Young Offenders Act provides that a Predisposition Report made in respect of a young person shall include, in addition to other information, the results of an interview with the victim in the case, where applicable and where reasonably possible. Section 20 of the Act provides that the youth court shall consider any Predisposition Report required by it, prior to making its disposition in the case. It therefore appears that a Victim Impact Statement is a relevant consideration with respect to dispositions under the Young Offenders Act, and can be submitted to the youth court as part of a Predisposition Report.

Legally, there is no written law existing which would prevent the submission of a Victim Impact Statement to the court; as long as the offender is protected and rules of evidence and the criminal procedure code are adhered to, the court has the authority to allow the admission of a Victim Impact Statement during sentencing proceedings.

To cite the learned trial judge in R. v. Gardiner S.C.C. 30 C.R.(3d) p.330:

> "One of the hardest tasks confronting a trial judge is sentencing. The stakes are high for society and for the individual. Sentencing is the critical stage of the criminal justice system, and it is manifest that the judge should not be denied an opportunity to obtain relevant information by the imposition of all the restrictive evidential rules common to a trial. Yet the obtaining and weighing of such evidence should be fair. A substantial liberty interest of the offender is involved. The information obtained should be accurate and reliable."

The Victim Impact Statement Project's goal is to provide to the courts such relevant information in the form of Victim Impact Statements. The Victim Impact Statement will provide the learned judge with information concerning the aggravating circumstances of the offence. As with all aggravating factors which are considered during sentencing proceedings, the burden of proof is upon the Crown. Therefore, all information contained in the Victim Impact Statements, if necessary, will be established by the Crown. If necessary, the victim may be called upon to testify as to the accuracy and reliability of the information contained in the Victim Impact Statement.

The information contained in the Victim Impact Statement will be prepared by an unbiased third party, similar to a probation officer preparing an impartial pre-sentence report on an accused person. Ideally, the end result will be an accurate and reliable piece of information which will inform the Court as to the detrimental effects of the offence upon the victim, thus aiding the Court in determining the seriousness or gravity of the offence.

Suit No. 455/85

IN THE COURT OF APPEAL OF MANITOBA

Coram: Matas, Huband and Philp, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN,	)	M. A. Baragar,
	)	for the Appellant
Respondent,	)	
	)	J. G. Dangerfield, Q.C.,
	)	for the Respondent
- and -	)	
	)	Appeal heard and
	)	Decision pronounced:
HANS WILLI PUESSER,	)	February 5th, 1986
	)	
(Accused) Appellant.	)	

HUBAND, J.A.

The accused was convicted on a charge of sexual assault after a trial before Hirshfield, J., and was sentenced to three and one-half years imprisonment. The victim was the accused's stepdaughter. There was also a charge of assault causing bodily harm for which the accused was convicted and sentenced to six months concurrent, but this sentence is not under appeal.

The sexual assault consisted of three elements. The accused fondled the child on a number of occasions when she was around eleven to fourteen years of age. Within the

same time framework there was one attempt at fellatio, but the child was not cooperative, and the attempt failed. On still another occasion, at the accused's suggestion, the child fondled herself in his presence, and inserted her fingers in her own vagina.

The child has since returned to the household of her natural father in British Columbia, where she now resides.

In determining the extent of punishment to be imposed upon the accused, some additional observations must be made. There was no completed sexual act, such as intercourse or fellatio. There was no violence or physical duress involved. There is an absence of evidence as to the impact on the victim. In short, there are certain elements of flagrancy which are missing, and which are usual where a sentence of three and one-half years is imposed. Further, it should be noted that the accused has no related record.

In all of the circumstances I would reduce the sentence to thirty months.

J.A.

I AGREE:

J.A.

Suit No. 455/85

IN THE COURT OF APPEAL OF MANITOBA

Coram: Matas, Huband and Philp, JJ.A.

B E T W E E N:

HER MAJESTY THE QUEEN Respondent - and - HANS WILLI FUESSER (Accused) Appellant	)	M. A. Baragar for the appellant J. G. Dangerfield, Q.C. for the respondent Appeal heard and decision pronounced: February 5, 1986

MATAS, J.A.

I dissent. I would not interfere with the sentence imposed by the learned trial judge who had the opportunity to hear the evidence and to make an appropriate assessment of the accused and the victim. The learned trial judge said:

> The degree of intent involved in the commission of the offences; the circumstances surrounding the commission of the offences and the manner in which they were committed; the gravity of the offences committed; your attitude after the complaint had been made; your previous criminal record, although I must say that I am not too concerned with your previous criminal record, and the mitigating circumstances which have been brought to my attention by your counsel. And, very importantly, the necessity to deter you and

> other male members of our society from committing like offences against young female children and the necessity to protect the public from you and others who might consider committing like crimes.

I do not think that the sentence is so inordinately high as to warrant appellate interference. Accordingly, I would have dismissed the appeal.

In the result, the appeal is allowed and the sentence is reduced from three and one-half years to two and one-half years with one dissent.

R.J. Matas J.A.

APPENDIX O

VICTIM IMPACT STATEMENT PROJECT TO COMMENCE FEBRUARY 17, 1986!

by THERESA CLARKE

VICTIM IMPACT WORKER

The Federal Department of Justice and the Department of the Attorney-General are jointly funding a project which will introduce Victim Impact Statements to the court.

The objectives of this project are threefold:

1. To develop a program where the effects of the crime can systematically be made available to the court at the time of sentencing.
2. By initiating contact with victims, to improve the perception of victims on their role in the court process.
3. To determine the feasibility of developing a program that would give all victims of crime the opportunity to provide information to the court on the impact of the crime.

The project is designed to allow an evaluation of the objectives. The use of Victim Impact Statements will be limited to three of the six City of Winnipeg Police districts, forming a target group and a control group. This will enable systematic comparisons to be made regarding the effects of Victim Impact Statements on sentencing and on the perceptions of victims in their involvement in the court process.

The use of Victim Impact Statements will be limited to crimes against the person. Specific offences to be included:

SEXUAL ASSAULT	(246.1, 246.2 and 246.3)
AGGRAVATED ASSAULT	(245.2)
ASSAULT WITH A WEAPON or ASSAULT CAUSE BODILY HARM	(245.1)
ROBBERY	(302, Non-commercial)

Wife abuse cases will not be included in the project, simply because of the large number of such cases and concern that an already vulnerable situation may be aggravated if the victim and the offender are still living together. Within the included offences, Victim Impact Statements will only be prepared in cases where the victim is fourteen years of age or older and the offender is an adult.

Submission of Victim Impact Statements to the courts will commence February 17, 1986. The Victim Impact Statement will be prepared following a personal interview with the victim. Information in the Victim Impact Statement will be kept current by periodic contact with the victim. The Victim Impact Statement will be submitted to the judge, crown counsel and defense counsel following a finding of guilt and prior to sentencing.

Victims' reveal impact of attacks

Seventeen victims of violent city crimes have given impact statements to be used in court as part of a new program

Social worker Theresa Clarke said the statements have been prepared since the pilot project began earlier this year.

However, Clarke said, the statements haven't been used yet because none of the accused has been convicted or pleaded guilty.

She said the reports will be provided to the sentencing judge, Crown attorney, and defence lawyer just as pre-sentence reports on offenders currently are handled.

"It would just provide a wider picture of the crime — the seriousness of the crime through its detrimental effect on the victim," Clarke said.

She said the statements aren't vengeance reports, but provide objective information about the victim's financial, physical, and emotional injuries.

Clarke said she interviewed victims of sexual assault, robberies, and other assaults shortly after crimes were committed.

"I ask questions about how it has affected their lifestyle, finances, that kind of thing, and then write up the report," she said, noting she doesn't do a psychological assessment of the victim.

From them

"The statement is not from me, it's from them. I just help them with it."

Clarke said her job is to distil the victim's comments in order to ensure the statement remains within the program's boundaries and is admissable in court.

"They (the victims) are not supposed to advocate a specific sentence or become very subjective," she said. "The statements are supposed to be factual."

On Friday, a Court of Queen's Bench judge refused to allow a lawyer representing a battered wife to address the court during her ex-husband's sentencing.

Mr. Justice Sidney Schwartz said such a move would create a dangerous precedent that might complicate the system in the future.

"There's an invitation to the community to consider elements of vengeance and elements of inflammation," he said.

Schwartz asked the lawyer to pass the information on to the Crown attorney who then related it to the court.

Clarke said she understood Schwartz's concerns, but added the pilot program is proceeding cautiously to ensure the statements remains a positive force.

THE WINNIPEG FREE PRESS
SUNDAY, MARCH 9, 1986

Judge questions validity of victim-impact reports

By Murray McNeill

A second Winnipeg judge has questioned the wisdom of courts hearing directly from victims before sentencing offenders.

Provincial Judge Frank Allen said although media reports indicate the public favors victim-impact statements, he opposes them.

The procedure creates a danger that courts will be used as a tool for vengeance, when their proper role is to protect the public, Allen said.

As well, judges usually can't undo whatever damage has been done to a crime victim, he said.

"But that doesn't mean I don't have sympathy for victims."

Allen made the comments during sentencing of a man who pleaded guilty to stabbing another man during a fight in a McPhillips Street parking lot last April.

A victim-impact statement, including comments from the injured man, was among material Allen was asked to consider in sentencing Antonio Pereira Pegado, 20.

Last March, a Court of Queen's Bench judge also questioned the wisdom of the procedure, which will be used in about 350 cases in Winnipeg this year as part of a 17-month trial project sponsored by the federal and provincial governments.

Mr. Justice Sidney Schwartz refused to allow a lawyer representing a battered wife to address the court during her ex-husband's sentencing.

"There's an invitiation to the community to consider elements of vengeance and elements of inflammation," Schwartz said.

He asked the lawyer to pass the information to the Crown attorney, who then related it to the court.

In yesterday's case, Allen allowed the victim-impact statement to be tendered and read in the case.

He said while he didn't support the concept, he agreed with some of the comments made by the stabbing victim.

Backs crackdown

Lyle Darrell Baldwin said he didn't think incidents like the knife attack on him usually happen in Winnipeg and it proves anyone can be a crime victim.

Allen said the courts and the public should take note of those comments.

The judge also said he agreed with Baldwin's suggestion that courts should get tough with people who carry knives.

Allen noted Pegado had told a probation officer he carries a buck knife for protection when he attends socials and other events because he was badly beaten by four men last fall.

He described Pegado as irresponsible and questioned whether self-defence was his sole motive for carrying a knife.

Noting Pegado started the fight, Allen sentenced him to nine months in jail on the charge of assault causing bodily harm.

He also gave Pegado an additional one-year suspended sentence for his involvement in the attempted theft of a car stereo earlier in April.

Court was told the April 27 stabbing incident began when Pegado lost control of his car and hit a curb on McPhillips.

He later told police that another vehicle carrying four men passed by and one made an obscene gesture and told him to "get that heap of junk off the road."

He said he became angry, followed the car to a restaurant on McPhillips and confronted the occupants in the parking lot.

During a scuffle with Baldwin, one of the men, Pegado pulled out his knife and stabbed him once in the lower abdomen, leaving a wound about 2.54 centimetres deep and 2.54 centimetres wide. He then left the area and was arrested later that same night.

KEN GIGLIOTTI/WINNIPEG FREE PRESS

THE WINNIPEG FREE PRESS
WEDNESDAY, June 25, 1986

Prosecutor doubts victims' statements will have much impact

By Ron Piche
For the National

SASKATOON — A federal initiative that allows judges to hear pre-sentence statements from the crime's victim won't have much impact on most court cases, a senior Saskatchewan Crown prosecutor says.

"The net result will be the same as it was before," Saskatoon lawyer Ben Wolff says of the experimental victim impact statement program announced last November and currently in use in North Battleford, Winnipeg, Calgary and Victoria.

Under it, Ottawa has allocated funds — about $43,000 for the North Battleford project — for workers to interview victims and determine how they were affected by the crime.

The victim's statement, which must comply with the regular rules of evidence to be admissible, is read in court by the prosecutor before sentencing and after an accused is found guilty. The judge may also simply refuse to accept the statement.

The goal, federal officials say, is to make the victim feel he has not been abandoned by the judicial process after charges are laid.

While Wolff agrees that the purpose is worthwhile, he believes the project will have little practical effect.

"Clearly, any court in sentencing has always been interested in the victim impact," he said.

"They get it either from evidence at trial or from a recitation of the facts as disclosed in the Crown's file — that's all supplied to the court."

The victim normally testifies at a trial or, if there isn't a trial, a probation officer's interview with the victim is usually included in a pre-sentence report, Wolff explained.

"In the end, it may not have been called victim impact statements per se, but the effect of it certainly is the same."

But David Shiplett, who prepares victim impact statements as part of the North Battleford project, says the new approach "is geared directly for the victim and gives him a voice which didn't exist before."

The average three- or four-page pre-sentence report only focuses on the accused and often contains little more than three paragraphs on the victim, he said.

Un projet-pilote qui permet aux juges de prendre connaissance de rapports contenant les déclarations des victimes de crimes avant le prononcé de la sentence de l'accusé aura peu d'impact, selon un procureur de la couronne de Saskatoon, M. Ben Wolff.

Le gouvernement fédéral subventionne un projet à North Battleford qui permettra à des travailleurs sociaux d'interviewer les victimes de crimes et d'en analyser les conséquences.

Cependant ces déclarations devront respectées les règles de la preuve afin d'être admissibles devant le tribunal.

"This way, we look at the impact on the victim only. It looks at the trauma they go through, the amount of loss they experience, and the effects of that loss," said Shiplett, a former probation worker.

He added that the victim statements are more detailed and extensive than pre-sentence reports.

"Plus, the only reason a pre-sentence report is prepared is because the judge ordered it or the defense lawyer or prosecutor decided on it."

Shiplett said that his involvement has shown him that "the victim does need a voice."

Practical considerations aside, one North Battleford lawyer says he sees wide-reaching negative implication deriving from the use of victim statements.

"Reputation may again become an issue as it once was and it shouldn't be," said Jim Brydon, a North Battleford legal aid lawyer.

He gave the example of someone found guilty of sexually assaulting a nun as opposed to a prostitute.

"There should be no difference (in punishment) — the thing done was wrong and should be punished accordingly," Brydon said.

Other concerns are that the program doesn't permit cross-examination of the victim and indirectly gives a victim standing, or a voice before the court, that is clearly not provided in the Criminal Code, he added.

"The real issue is: If we're going to deal with victims, let's deal with victims. Let's not put everything on the accused's head," Brydon stated.

"Throwing a bone and giving victims a chance to show their grief to a judge — you have to wonder if it helps."

NATIONAL, Vol. 13 no. 7, July, August issue

WINNIPEG FREE PRESS, Dec 14/85

Judge flayed for seeking personal opinions

By Bob Cox

The Court of Appeal has castigated a judge who asked for personal opinions on sentencing from lawyers and parents of both a sexual-assault victim and a teenager convicted of attacking her.

In a decision released yesterday, the Appeal Court judges said youth court Judge Ross Johnston acted improperly when he sought the opinions last May.

"The personal opinion of counsel should never be elicited," Mr. Justice Charles Huband wrote.

"Further, seeking an opinion from the families of those involved, either of the complainant or accused, as to appropriate sentence, is to be avoided. They should not be asked the very question which the court is called upon to decide."

The Court of Appeal made the comments despite overturning the youth's conviction, making it unnecessary to deal with the sentence Johnston imposed.

The judge convicted the youth, now 17, of sexual assault and gross indecency in an attack on a 14-year-old girl in September 1985.

Before ordering the youth to do 100 hours of community service work and pay a $100 fine, he asked for the personal opinions of people in court as to what he should do.

The judge had already heard both defence and Crown submissions, and had read a presentence report and victim-impact report.

Defence lawyer Tony Marques first replied that it was inappropriate for him to give an opinion, but

See LAWYER page 4

Lawyer uncomfortable with judge's request

continued from page 1

he eventually did so, the Court of Appeal ruling notes.

The girl's father said he didn't want to make a sentencing suggestion, and Johnston accepted that.

The judge then asked the mother of the convicted boy, who said she didn't think her son was guilty and that he shouldn't be punished.

However, the appeal decision notes that Johnston persisted and asked, now that her son had been found guilty: "What should be done here . . . is custody needed?"

Huband said it is one thing for a judge to ask the defence and Crown for submissions on an appropriate sentence, but quite another to ask for personal opinions.

"It is entirely possible that the personal view of defence counsel would be at variance with the submission which defence counsel makes on behalf of his client in fulfillment of his obligation to represent the accused," he said.

Marques said yesterday he felt uncomfortable giving his personal opinion, because it didn't have a lot to do with the case.

"It had never happened to me before. He was putting me in sort of an uncomfortable position."

Marques agreed lawyers could be put at odds with their formal submissions if asked for personal views, although that didn't happen in the youth's case.

Huband stressed he wasn't criticizing a pilot project in which victim-impact statements are used at sentencing hearings.

He said Johnston's actions had nothing to do with victims relating the effects of a crime on them, or with improving their perception of the court process.

The male teenager was convicted after Johnston heard that he was one of three youths who participated in the sexual assault.

He was accused of helping the youth who raped the girl a number of times in the back seat of a car.

Huband said the youth court judge erred in not determining if the youth's testimony was enough to raise a reasonable doubt of his guilt.

He said the youth gave an entirely different account of his role in the incident, adding there were contradictions, confusion and a lack of certainty in much of the girl's testimony.

Two other youths still face charges for the incident.

Victims of crime given a chance to speak

BY DUNCAN McMONAGLE
The Globe and Mail

Victims of crimes in Metro Toronto now can record their emotional reactions of violation, as well as the physical damage and financial loss they suffered in the attack, and offer them to a judge.

An 18-month test program, which Ontario Attorney-General Ian Scott called unique in Canada, will see the Metro police force distributing four-page "victim impact statements" to victims of crimes in which a person has been charged.

The point of the program, Mr. Scott told a press conference, is that it allows the victim to choose his or her own way of describing what has happened to them and its consequences."

Victims will be encouraged to make the statements, Mr. Scott said, "even if the victim wants to say something good about the accused."

Any victim will be able to insist on being allowed to make such a statement as soon as a person is charged with the crime. They can also update the statement later.

If a victim, or the immediate relatives of a person killed in a crime, makes such a statement, the Crown counsel will decide whether to use it in a trial.

The victim can withdraw the statement at any time but, if it stands, a copy of the statement will be provided to the accused on request.

The victim can be required to testify in court about the statement, submit supporting evidence such as receipts to prove financial loss, and be cross-examined on any statement admitted in evidence.

It will then be up to the judge to decide whether to give the statement any weight during the trial or at sentencing.

The procedure is a result of many complaints that "victims are the unheard person," Metro Police Chief Jack Marks told the press conference.

Allowing a police officer or Crown counsel to speak for the victim is unsatisfactory, the Attorney-General said, because the victim's story is "filtered through a court official."

Earl Levy, president of the province's Criminal Lawyers Association, reacted skeptically yesterday, although he said he had not seen the form.

Victims of crimes are understandably angry, Mr. Levy said in an interview. However, "I don't think the courtroom is the place for that anger."

Introducing victim impact statements in some cases "can reduce sentencing to luck," he argued.

Mr. Marks said the program began on Jan. 1, but he could not say whether any statements have been made yet.

The victim impact statement asks for details of physical injuries and property and financial loss from the crime.

Then it says, "Please describe your feelings on how being the victim of this offence has affected you personally and those around you. Indicate whether you have received any counselling or therapy as a result of this incident."

JANUARY 17, 1987
TORONTO GLOBE AND MAIL

PROGRAM ON TRIAL

LAWYERS SLAM VICTIM STATEMENTS

By LINDA WILLIAMSON
Sun Staff Writer

Manitoba lawyers are critical of the province's year-old pilot program that gives crime victims a chance to tell their stories in court.

The victim-impact program, set to last until June, allows victims of assaults, robberies and sex offences to tell a judge how they were affected by the crime, before their attacker is sentenced.

Ontario last week introduced a similar program, to be handled by the police.

Yesterday, lawyers at the Manitoba Bar Association's mid-winter meeting called the program everything from "unnecessary" to "dangerous," saying it panders to a trend towards "victims' rights and vengeance."

A victim's sob story, or "vengeance statement" has no place in court," Hersh Wolch, president of the Manitoba Trial Lawyers Association, told the meeting.

Wolch and several other lawyers blamed the media for spreading the idea that the courts are lenient and don't care about the victim's rights.

"I have nothing against victims," Wolch joked, "but surely it's not up to the courts to make up for the problems of victims."

Crime victims should be better informed about how their cases are handled, but letting them into the sentencing process isn't the answer, he said.

"This idea that the victim will somehow feel better by being able to air his views in public — the benefit is momentary at best."

All crimes should be treated the same way, regardless of the victim, Wolch said.

It shouldn't matter to the court whether the victim of a rape is a rich society woman or a hooker — the same crime deserves the same sentence, he said.

"The fact that different people react differently to the same crime is out of the hands of the accused."

John Guy, Manitoba's assistant deputy attorney general, said the statements are supposed to provide judges with more information on the nature of the crime. However, several judges at the meeting had critical comments.

"What is the real purpose of these statements?" Mr. Justice Patrick Ferg asked Guy. "Is it to make the victims feel better, or to make the courts give out higher sentences?"

Theresa Clarke, coordinator of the statement program, said the vast majority of statements she's taken have yet to go before the courts.

Of the 225 victim-impact statements taken, 20 have been dealt with.

The statements are taken shortly after the crime, Clarke said. Manitoba's program is unique in Canada because it is independent of the police and courts.

The statement goes to the Crown attorney, defence lawyer and judge only after the accused is found guilty.

THE WINNIPEG SUN, Sunday, January 25, 1987

LET'S NOT VICTIM-IZE COURTS

We all feel sorry for victims.

We share their pain, because we fear being victimized ourselves.

Even defence lawyers feel sorry for victims. After all, if there were no victims, they'd be out of work.

But defence lawyers everywhere are crying out against what they say is a nasty trend: the Victim Impact Statement (VIS) program.

Manitoba pioneered such a program a year ago; Ontario jumped on the bandwagon last month.

The programs differ, but both are geared toward giving crime victims more of a say in court.

No more, "sorry, ma'am, that purse-snatcher copped a plea." No more, "oh, we forgot to tell you, the man who killed your son got off with two years last week."

A VIS enables assault, robbery or sex crime victims to tell the judge of the trauma they suffered, in the hope that the judge will sentence the culprit accordingly.

Although the local program is a year old, only 20 of the 200 statements that have been taken have gone before the courts so far.

No wonder defence lawyers have just begun to take arms against what they call an outrageous sop to revenge seeking victims.

Trial Lawyers Association president Hersh Wolch led the charge at last week's conference of the Manitoba Bar Association.

Victims go through a whole complicated series of terrible emotions that have no place in court, he said.

Studies in the U.S. have come up with some troubling reasons for why some victims become outspoken, Wolch pointed out.

Perhaps a child, who has trouble at home, runs away and is murdered while hitchhiking. The parents feel guilty about their bad relationship, and often become the most ardent fighters for victims' rights.

Maybe they feel they should do something to make up for their negligence when the child was alive.

This is not meant to be an attack on victim advocates, Wolch points out. But it could turn into one, in court.

Imagine the defence lawyer: "Admit it, Mrs. Smith, the real reason you're traumatized is because you kicked Johnny out of the house, and you feel reponsible for his death!"

Not only is this ugly, it has nothing to do with how Johnny's killer should be punished.

In Manitoba, relatives of homicide victims don't get to make a VIS, which has upset members of Victims of Violence and other groups.

But the same logic goes for the poor old woman who has her life savings stolen and is afraid to go outside for the rest of her days, Wolch said.

He had some terrific examples:

Which burglar should get the stiffer sentence? The one who breaks in and finds a terrified old couple, or the one who breaks in and finds a pair of yuppies who say, "Take everything we have! We have insurance"?

Which rapist should be jailed? The one who attacks a judge's wife, or the one who beats up a hooker?

To evaluate victims this way comes dangerously close to our old sexist system, where rape victims were grilled on their sexual history, and treated as if they were "asking for it."

Shouldn't the same crime get the same sentence, no matter who the victim is?

We'll always be able to read about the outraged, the vengeful and the pathetic in the papers, and join in their emotions if we wish.

But if we base our justice system on them, we

THE WINNIPEG SUN, Sunday, February 1, 1987

Canada Manitoba

Victim Impact Statement Project

A project jointly funded by the Federal Department of Justice
and the Manitoba Department of the Attorney General

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February 5, 1987

Ms. Linda Williamson
Sun Staff Writer
1700 Church Ave
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Dear Ms. Williamson:

In recent weeks, the repercussions of the Winnipeg Victim Impact Statement project presenting the opportunity for certain victims of crime to prepare Victim Impact Statements have been greatly over-dramatized. I am referring specifically to the two articles "Program on Trial" and "Let's not Victim-ize Courts".

Firstly, the usage of Victim Impact Statements falls within the jurisdiction of the presiding judge. The discretion to place weight upon the contents of the statement is left completely up to the sentencing judge. The purpose in presenting this information to the court, is simply to provide the court with information that may be relevant in the sentencing process. The severity of the crime has always been a factor in the sentencing process and therefore the detrimental effect of the crime upon the victim should be considered. It is unknown what effect a Victim Impact Statement will have on sentencing.

The comment "which rapist should be jailed? The one who attacks a judge's wife, or the one who beats up a hooker?", was raised in the article "Let's not Victim-ize Courts". I shudder to think that a distinction can be made. Each victim has been violated and each case should be tried on its individual merit, regardless of the social position of the victim.

The author then goes on to say "Shouldn't the same crime get the same sentence, no matter who the victim is?" The Victim Impact Statement presented to the court would not make a distinction concerning who the victim is, but would let the court know how the crime has affected the victim - physically, financially and emotionally. The distinction is not made as to

who the victim is, but as to how the victim has been affected by the crime. The Criminal Code of Canada provides for sentencing variations for certain crimes. These variations are there for a variety of reasons, one of which is the gravity of the offence committed against society. How the crime has affected the victim is certainly relevant in determining the gravity of the offence committed against society.

The Victim Impact Statement Pilot Project developed out of a growing concern for the needs and rights of victims. Time will tell if the preparation of a Victim Impact Statement assists victims in feeling more involved in the court process and whether victims will feel that the arms of justice have been extended to them.

Theresa Clarke

Theresa Clarke
Winnipeg Victim Impact
Statement Project

MANITOBA

Argument over victim-impact statements remains heated

By Bob Cox
Manitoba Correspondent

WINNIPEG — An experiment with victim impact statements is still under fire from defence lawyers a year after it began.

During the Manitoba Bar Association's Mid-winter meeting, lawyers and even some judges took shots at the statements, saying they'll introduce subjective emotions into the sentencing process and result in different punishment for people committing exactly the same crimes.

"I believe that the whole program is completely unnecessary," Winnipeg lawyer Hersh Wolch said.

He said there may be some truth to the contention that victims are being ignored, but he said the courts are the wrong place to help them.

"I'm not against victims, but let's assess where victims need assistance and address those needs. Let's not stuff it off on the courts," Wolch said.

"Victim impact statements are not the way to go about helping victims."

He said crime victims need information on their rights, the status of a case, the outcome, the possibility of criminal injuries compensation and return of exhibits.

They don't need to become part of the prosecution, he said.

"What we have here through victim impact statements is taking the victim out of the realm of being a witness and making him or her a party to the proceedings, and that's where I feel the error is."

He added the court system doesn't ignore victims and hand out lenient sentences as much as is commonly believed.

"We're trying to overcome something that just doesn't exist," Wolch said.

In the 17-month Winnipeg program, jointly funded by the federal and provincial governments, a social worker operating independently of police and prosecutors has been taking statements from victims of violent crime since last January.

Hersh Wolch
Program unnecessary

Co-ordinator Theresa Clarke said she has done about 225 reports and 20 have gone through court.

John Guy, of the attorney general's department, said the province feels the statements — which address physical, financial and emotional impact — are a valid consideration in sentencing because they provide information on the gravity of an offence.

But Wolch said it shouldn't make any difference if one victim handles a crime better than another.

If a drunk driver kills a prominent lawyer with a dependent family, or a terminally ill transient, it shouldn't make any difference to the sentence given for the crime committed, Wolch said.

But he said U.S. experience shows sentences increase when judges hear directly from victims.

"We are losing our perspective and putting the element of luck into the criminal process," Wolch said.

He added judges don't need a report from the victim to realize the impact of a rape or similar crime, and enough information is already available in evidence such as medical reports and pre-sentence reports by probation officers.

Wolch said such statements could be prone to exaggerated claims made by victims interested in compensation.

Guy noted the statements can be challenged, but lawyer Sheldon Pinx said a defence lawyer would have to be crazy to cross-examine a victim on the impact of a crime for fear of inflaming the sentencing judge.

Rocky Pollack, president of the Manitoba Bar Association, said victim impact statements are just another form of evidence contamination where victims' stories, right or wrong, are reinforced by professionals several times before a case goes to court.

Thus, a witness can become convinced he has seen a crime when he hasn't seen anything illegal at all, Pollack said.

Mr. Justice Patrick Ferg, of Court of Queen's Bench, said courts have enough information on victims 99 per cent of the time and all the statements do is introduce a piece of subjective evidence into sentencing.

Guy said the province hopes the experimental program, scheduled to end in June, can find a compromise so as not to infringe the rights of an accused person yet still give victims a say in the criminal justice process.

The program is one of four across Canada, though it is the only one operating independently of police and prosecutors, Guy said.

Ontario Attorney General Ian Scott recently announced a fifth program in which victim-witness assistants will be placed in 10 Crown attorneys' offices in the province.

NATIONAL, The official publication of THE CANADIAN BAR FOUNDATION
Vol. 14, no. 2, February, 1987

REPORTS REJECTED AS HEARSAY

JUDGES BLAST VICTIM-IMPACT STATEMENTS

Manitoba's top judges are angry that victim-impact statements, currently allowed under pilot projects, may become a hand tampering with the scales of justice by admitting hearsay into court proceedings.

By LINDA WILLIAMSON
Sun Staff Writer

Manitoba's top judges yesterday ripped apart police and government projects — including one backed by the Attorney General — that seek to give crime victims more say in court.

Victim-impact statements, designed to let a judge know, before sentencing, how the victim was affected by the crime, are hearsay and have no place in court, said Chief Justice Alfred Monnin.

"If the victim is a child of seven or eight, she must be disturbed. I don't need someone coming in and telling me a lot of cock-and-bull story.

"These things are hearsay. How do we know it's true? There is no way of checking it."

The victim-impact trend, which has spawned pilot programs in four provinces in the past year, is dangerous to the courts, Monnin said.

"Someone is actually being paid for doing these damn things," he fumed, adding that there is too much risk of victims making up stories of suffering. The idea that the victim can influence a criminal's sentence is wrong, added Mr. Justice Charles Huband.

"It means people are coming in saying, we want tough sentences. But we've never allowed a public reaction on sentencing, and I don't think we're proposing to do it now."

All three judges warned that the Manitoba victim-impact statement program, which began a year ago on a test basis, wouldn't last long if they turned out such hearsay.

"I think we're going to have to plug the test right now if it's going to be of this nature," Monnin said.

"There's a difference between the actual impact on the victim and this report, which has nothing to do with it," put in Mr. Justice Kerr Twaddle.

The three-judge panel was hearing an appeal of a man convicted last fall of sexual assault on a six-year-old girl.

The victim-impact report in the case said the girl had been very disturbed since the crime and now acted sexually toward men. The judges said all the information was hearsay.

However, they felt Madam Justice Ruth Krindle had been influenced by the report when she sentenced Ronald Jeffrey Lang to four years in prison.

The report in the case was actually done by the Winnipeg police Child Witness Preparation program, not the Attorney General's department, as the judges believed.

The judges reserved their decision on Lang's case.

'The danger is... fabrication'

While Parliament studies a bill to remove the need for courts to corroborate children's testimony, the Manitoba Court of Appeal is skeptical about children's truthfulness.

A smart child isn't necessarily a truthful child, the Manitoba Court of Appeal suggested yesterday.

The three-judge panel reserved decision yesterday on a sexual assault case, in which a lower-court judge had been impressed by the brilliant testimony of a nine-year-old girl.

Madam Justice Ruth Krindle had sent Ronald Lang to prison for four years, because she felt his child victim was more credible than he was.

But at yesterday's appeal, all three judges commented that the girl's good performance didn't mean she was telling the truth about some 40 acts of gross indecency.

"With young children of this age, the danger is one of fabrication, of creation," Mr. Justice Kerr Twaddle said.

"The higher the IQ, the greater the potential for imagination."

Even though there is a move afoot to change the law, Twaddle said, judges traditionally find it risky to believe children when no one else backs up their stories.

The court reserved decision on Lang's case.

Chief Justice Alfred Monnin noted a victim-impact report that said the little girl was disturbed and made sexual advances to another man after Lang's assaults.

"If she is so disturbed she can pop up with stories like that, she may have framed this fellow," he said.

The judges' comments only show the need for new laws, child abuse expert Norma McCormick said.

A bill is now before Parliament to get rid of the corroboration rule in child abuse cases, she noted.

Proponents of the bill stress that children are no more likely to lie than adults.

"We're heading towards a day when whether a child is believable in court will be no different than whether an adult is believable," McCormick said.

THE WINNIPEG SUN, Thursday, March 5, 1987

Program stumbles

JUDGES' BARBS UPSET VICTIM-IMPACT WORKERS

By DARRYL STERDAN
Sun Staff Writer

Victim-impact statement workers fear their campaign to give crime victims more say during trials may be hamstrung by a court's recent cutting criticism of the idea.

A spokesman for the province's pilot project on victim-impact statements — designed to tell a judge, before sentencing, how a victim has been affected by a crime — said the Manitoba Court of Appeal's rejection of one statement Wednesday could scare away other victims.

"Victims will be worried that their statements will be slammed in the papers as well," Theresa Clarke said. "I'm upset."

The three-judge panel lashed out at the statements during an appeal of a man convicted last fall of sexually assaulting a six-year-old girl.

They said the idea that a victim can influence a criminal's sentence is wrong, and the victim-impact trend is dangerous to courts.

However, Clarke disagreed with the judges' views that they are "cock and bull" stories that can't be checked and have no place in court.

"The statements allow victims to provide information to the judge as to how the crime has affected the victim. The victims benefit from this by being able to participate in the court process," she said.

The statement that was criticised this week was prepared by the Winnipeg Police Child Witness Preparation program, not by Clarke.

The police's program has run for three years, and handles all the cases involving people under 14, which fall outside Clarke's program guidelines.

Co-ordinator of the police program Diane Dolski was equally dismayed by the condemnation.

"My question to the court is what is the difference between a victim-impact statement and a pre-sentence report (which examines the accused's state of mind)?

"Do only the accused have the right to be examined? Do they have rights the victim doesn't?"

A spokesman for the Manitoba Trial Lawyer's Association said if the program is implemented full-time, lawyers will try to have it quashed.

"If you get a case where a judge relies on it and it affects the sentencing, then it can be appealed," and that case can be used as a basis for getting the practice stopped, said lawyer Jeff Gindin.

"I understand that victims feel they should get some sort of say, but that's an emotional response not a logical one.

"I've seen a lot these reports, and sometimes you tend to question a lot of them.

"With sexual assault cases, it seems that everything that happens afterward is a symptom."

Gindin said he awaits the end of the program in July.

"It'll be nice when it's over and we can get back to the simple sentencing procedure, without all these elements of revenge."

THE WINNIPEG SUN, Friday, March 6, 1987

Court rebuked for knocking report

Appeal Court criticism of victim impact statement termed premature

Attorney General Roland Penner has rebuked the Manitoba Court of Appeal for criticizing a pilot project to give crime victims a say in court.

"It was not a judicious thing to do," Penner said yesterday.

He said the criticism of the victim impact statement project, delivered during an Appeal Court hearing Wednesday, was premature because the program has not yet been completed or evaluated.

"It's a matter of great regret that the chief justice of Manitoba and some other judges saw fit to pass judgment on this program before its completion."

Chief Justice Alfred Monnin and two other Appeal Court judges criticized use of victim impact statements during sentencing hearings.

The high court judges, dealing with such a statement for the first time, said such reports are hearsay and have no place in court.

Penner said presentence reports, which probation officers prepare after collecting information outside court, about an offender's background, are the same type of evidence as victim impact statements.

"They are no more or no less hearsay than victim impact statements," he said.

The report, on an 11-year-old girl sexually assaulted several times by the same man between 1982 and 1984, was labelled victim impact statement.

It did not resemble any of the 26 statements from the pilot project used in court so far.

It had been prepared by a social worker with the Winnipeg police department's child abuse witness program, and contained opinions and subjective observations.

It said in part that the girl "lacks the mechanisms to deal with her repressed anger and hostility" and her "pseudomaturity, coupled with inappropriate coping mechanisms, socially isolates her."

Theresa Clarke, co-ordinator of the pilot project, said yesterday that victim impact statements she prepares are as objective as possible.

"It's directly from the victim's mouth," she said.

Clarke said a victim reads and signs her notes after an interview, acknowledging the information to be true.

She said she then prepares a typewritten impact statement and sends a copy to the victim.

As of Jan. 30, Clarke said, she had prepared 220 statements for victims over the age of 14 on sexual assaults, crimes against the person and non-commercial robberies.

Monnin, after reading the report before the court, said judges would not know if information in the statements is true because there is no way of checking it.

He said judges might have to stop accepting the test if statements were going to resemble the one the Appeal Court considered Wednesday.

Meanwhile, critics of victim impact statements welcomed the Appeal Court comments.

"I think the Court of Appeal position is very correct," said Hersh Wolch, president of the Manitoba Trial Lawyers Association.

"I feel that victim impact studies are of such minimal use they're hardly worth the money," he said, adding the money would be better spent on other victim assistance programs.

Wolch said the statements misdirect the court process, focusing it on the impact of a crime rather than the offender's intent.

If such evidence was used regularly, he said, the courts might end up holding long hearings to determine how traumatized particular victims are by the crimes committed against them, Wolch said.

He said the popular belief that courts ignore victims is not true.

Defence lawyers often complain of judges being overly sympathetic to victims and they do not need reports to know there will be harmful effects from a violent crime, he said.

Penner, meanwhile, said the judges' comments will not affect the project, due to end in July, or its evaluation, expected to be completed a year from now.

THE WINNIPEG FREE PRESS, Friday, March 6, 1987

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OURVIEW

"... Leave an unshackled press as a legacy to your children ..."
— Joseph Howe

Who will speak for the victim?

It is tradition that justice is blind.

It is supposed to be meted out without fear or favor, without consideration for color, race, creed, religion, etc.

It's theoretically a just-the-facts system of punishment.

Now there is a new wrinkle being introduced that is raising the blood pressure of some lawyers and judges (who are also lawyers).

The innovation is the use of victim-impact statements, introduced in court as another piece of evidence on which a sentence can be based.

This week the province's highest court scathingly criticized the admission of victim impact statements in the sentencing process, calling their content's hearsay evidence. One justice suggested that victims might make up some tale of suffering to influence a sentence.

Well, well, aren't we open-minded?

It's just dandy that courts can hear about how a person convicted of a crime is really a swell guy who had one drink too many or has already paid for the crime through personal anguish.

We hear every week from lawyers who deliver such mitigating accounts to judges to influence sentencing. And these statements are often liberally laced with what could only be described as hearsay evidence.

The Crown speaks for society, but who speaks for the victim?

If defence statements are allowed, why can't we hear from the victims of crime, those who have truly suffered?

The arguments against such statements are that people convicted of the same crime shouldn't be sentenced differently simply because victim A may have suffered more than victim B.

Why not? It happens now, anyway.

Sentences are handed out depending on circumstances. Many criminals charged with the same offence are given varying sentences.

For many crimes, judges are given huge latitude in the length and type of sentence they may impose.

They take into account the way the crime was carried out, the motivation of the criminal and other factors.

There is no reason the victim's personal account can't be added to the mix. It's time we let them have their day in court.

THE WINNIPEG SUN

Most feel justice system favors rich

By Peter Maser
Southam News

Most Canadians think the country's justice system is too complicated and favors the rich, says a new public opinion poll.

But a majority also feel the system is basically fair and a good use of taxpayers' money, says the poll commissioned by the federal justice department.

Obtained by Southam News through access-to-information, the $70,000 survey also reveals that most Canadians:

- Feel better protected under the Charter of Rights;
- Are now more careful not to drive after drinking;
- Believe crime victims should be able to tell a judge what the crime has done to their lives.

Conducted by Environics, a Toronto-based research firm, the poll of 1,552 adults from mid-December to early January was designed for a variety of program and policy needs, including the question of how Canadians see their justice system in the abstract.

The poll shows that 75 per cent agree that the law favors the rich. Even more, 87 per cent, agree the system is too complicated for the average person and needs to be made more sensitive and compassionate.

But is the system fair to the average person? Yes, say 75 per cent.

And almost the entire population — 96 per cent — agrees Canada must maintain a good and fair justice system "regardless of the cost."

It's costly now. But compared to other ways the government spends money, eight in 10 Canadians feel the justice system is a good use of taxpayers' dollars.

And while it's become fashionable in some circles to criticize the Charter, nearly seven in Canadians believe their rights were not well enough protected until it became part of the constitution.

THE OTTAWA CITIZEN •

WEDNESDAY, MARCH 11, 1987

The survey found that 64 per cent of the population has a drink of beer, wine or other alcohol a few times week, and that 16 per cent of us consume alcohol every day.

Yet nearly 90 per cent of all adults feel drinking and driving is a serious crime, and the same percentage say they would take their friends' car keys if they felt they'd had too much to drink.

When asked if they had become more careful not to drink and drive in the past few years, 62 per cent said they had, against three per cent who said they had not.

The federal government brought in tough, new drunk-driving laws in 1985, a fact recognized by three-quarters of those surveyed.

Respondents cited the fear or embarrassment of being caught as an important reason why they wouldn't drink and drive. Even more important, however, was the desire to avoid a fine or jail term, and more important still was the concern about endangering one's self or others.

Canadians also have strong feelings about victim impact statements.

Victims rarely have the opportunity in Canadian courts to tell a judge what a crime has done to them. But 90 per cent of Canadians feel such statements should be allowed, and almost as many — 87 per cent — believe this would make the justice system more fair.

Among the poll's other findings:

- Seven in 10 Canadians support the law that forbids street soliciting for the purposes of prostitution.
- Eight in 10 Canadians feel the law should require people to settle disputes through divorce mediators before resorting to the courts.

STATEMENTS RILE JUDGES ONCE AGAIN

By LINDA WILLIAMSON
Sun Staff Writer

Controversial victim-impact statements drew fire again yesterday from the province's highest court.

The Manitoba Court of Appeal's recent frustration with the new court documents, which seek to give victims a greater voice in court, may prompt them to issue a written report, Chief Justice Alfred Monnin said.

In a twist on the recent controversy, yesterday's case involved a statement that claimed a child victim hadn't suffered from her grandfather's sexual attacks.

The three-judge panel was outraged when Crown attorney Jack Montgomery told them they ought not to consider the report.

"What is this victim-impact statement?" demanded Mr. Justice Kerr Twaddle, in the second such case this month.

"No one seems to be tel[illegible]his court how it should be conside[illegible]and the limitations of its use."

"Who invented the idea?" asked Chief Justice Alfred Monnin, who was echoed by Mr. Justice Alan Philp.

"Surely if the court wants something like this, it asks for it."

Twaddle said it looked like the Crown was trying to have it both ways.

"I don't think we can have (victim-impact statements) in cases where they show a horrible impact on the victim and not in cases where they don't show a horrible impact."

The judges and Crown said they were surprised to find there is more than one victim-impact project. One is a pilot project sanctioned by the Attorney General; the other is done by workers in the Winnipeg police Child Witness program.

In both cases, the controversial statements had been prepared by the police program.

Each consisted of a social worker's observations of how well the child had coped with the assaults.

"It's all speculative," Monnin noted. "I don't see much purpose in it, when the victim is a child of seven or eight."

"A young social worker, I respectfully submit, hasn't the faintest idea of how the child may be affected by this kind of assault," Montgomery said.

Defence lawyer Jeff Gindin told the court he has always spoken out against the statements, because they can contain the victim's emotions and desire for revenge.

Added Twaddle: "The real question is what relevance does the impact on the victim have in a criminal sentencing?"

The judges refused to raise the man's sentence from 30 months.

THE WINNIPEG SUN, Thursday, March 12, 1987

Victim reports assailed

By Bob Cox Free Press

Manitoba Court of Appeal judges lashed out at victim impact statements again yesterday and said they will make an official comment soon on the use of such reports.

During a sentence appeal by a sex offender, a three-member panel of the court, including Chief Justice Alfred Monnin, repeated concerns raised a week ago about the victim reports.

The judges said they are not happy seeing victim statements in court and they should not play any role in sentencing hearings.

The statements are hearsay evidence and, unlike pre-sentence reports on offenders which also contain hearsay information, there is no provision in the Criminal Code for their use in court, the judges said.

Monnin said the Court of Appeal could comment officially on victim impact statements, either in its reasons for its decision in yesterday's appeal or in a future case.

The judges, after quizzing Crown attorney Jack Montgomery, were aware they were considering a police department report and not a victim impact statement from a pilot project run by the attorney general's department.

However, their criticism of giving victims a say in sentencings remained the same.

Project criticized

Last week, a Court of Appeal panel, after reading a report prepared by the Winnipeg police department's child-abuse witness program, criticized the unrelated pilot project.

Attorney General Roland Penner rebuked the judges for prematurely criticizing the experimental program which does not end until July.

Statements from the program are objective reports of the emotional and physical impact of crimes on victims over the age of 14, the project's co-ordinator said.

However, the police department's reports contain opinions and comments from a social worker.

The report in yesterday's case detailed how a nine-year-old girl was coping after being raped by her step-grandfather several times.

The man, 40, raped her in 1985 — when she was eight — at least 11 times while babysitting her in Winnipeg.

Though another Crown attorney entered the statement during sentencing of the man last year, Montgomery argued the report should not have been used.

It said the girl had initial difficulties with nightmares, flashbacks and headaches, but she is now coping well, doing well in school, has placed the blame on her step-grandfather and does not need professional therapy.

Montgomery, arguing for the Crown in its appeal of a 30-month sentence imposed by a lower court judge, said the report was not relevant because a social worker could not predict the long-term effects of the rapes on the girl.

At the sentencing, Mr. Justice Vern Simonsen of Court of Queen's Bench said the statement was a positive consideration.

THE WINNIPEG FREE PRESS, Thursday, March 12, 1987

Chief justice throws 'red flag' on victim impact statements

By Murray McNeill

Judgment day is fast approaching for certain types of victim impact statements, Manitoba's chief justice has warned.

"I am throwing a red flag on the field and giving advance warning that in the not too distant future serious consideration will have to be given to the propriety of such reports," Manitoba Court of Appeal Chief Justice Alfred Monnin said in a written decision yesterday.

Monnin said a victim impact report prepared last year by a social worker with the Winnipeg police department's child abuse witness program was based on unsupported hearsay evidence which could be described only as inflammatory.

Police program

Monnin stressed his comments pertained only to the type of victim impact statements prepared under the police department's program.

He noted the police program is separate from a victim impact statement program being tested by the provincial Attorney General's Department.

"I have yet to see a victim impact statement from this latter group and any comments I may wish to make will have to wait until I receive one," he said.

Monnin made the comments in a minority decision in the case of a 23-year-old Winnipeg man sentenced last fall to four years in prison for sexually assaulting his wife's former foster sister.

Two of Monnin's fellow judges, Mr. Justices Kerr Twaddle and Charles Huband, yesterday overturned the conviction of the man, saying it was unreasonable given the facts of the case.

Monnin dissented, saying he would have upheld the guilty verdict of Madam Justice Ruth Krindle, as well as the sentence imposed.

In their written ruling, Twaddle and Huband did not comment on the propriety of the victim impact report, which was submitted by the Crown at the man's Court of Queen's Bench sentencing hearing.

Monnin expressed similar concerns about the propriety of such victim impact reports when the appeal was heard last month.

At that time, the court was under the mistaken belief the report was prepared as part of the Attorney General's Department program.

However, when that point was clarified, Monnin said he still had concerns about whether victim statements should be allowed to form part of the sentencing process, and that the court would have to make an official comment.

The chief justice's main objection to the report filed in the appeal case was that it contained serious allegations made by the girl's current foster mother as to the youngster's behavior and emotional state since the alleged assaults.

He said it is questionable whether the girl's behavior can be directly attributable to the man and his alleged misconduct.

He said if such allegations are to be made, the foster mother should have been called to testify.

"The sentencing process is far too delicate to be disturbed by statements of a hearsay nature."

The man was convicted of two counts of gross indecency and one of sexual assault last October.

He was charged in January of last year after his wife's former foster sister complained that he had sexually assaulted her on about 40 occasions between 1982 and 1984.

Krindle said she did not believe the man's defence and totally believed the evidence of the girl — aged 11 when she appeared in court.

The judge described the child as intelligent, articulate and mature beyond her years.

While Monnin said he could find no fault with Krindle's conclusion, Twaddle said the allegations by the girl were unsupported by the circumstances of the case.

Apart from her testimony, there was no evidence which confirmed that she had been sexually assaulted, Twaddle said.

He noted medical evidence indicated that not all of the girl's allegations were true.

"Bearing in mind the dangers of relying exclusively on the evidence of a complainant in circumstances such as those found in this case and the requirement that the charge be proved beyond a reasonable doubt, I am of the view that it would have been unreasonable on the facts of this case for any trier of fact to have reached a guilty verdict," Twaddle said.

"The credibility of the complainant was not of itself a reasonable basis for a conviction."

THE WINNIPEG FREE PRESS
Friday, April 3, 1987

Man acquitted of sex assault

APPEAL COURT RULES 'BRIGHT' GIRL'S DESCRIPTIONS NOT ENOUGH

By LINDA WILLIAMSON
Sun Staff Writer

The province's highest court has overturned a man's conviction for child molesting because there was no evidence to support the child's story.

In a 2-1 split decision, the Manitoba Court of Appeal acquitted Ronald Lang of three sex offences on a young girl, for which he had been sentenced to four years in prison.

The girl, who was 11 at the trial, had impressed the lower-court judge with her vocabulary and intelligence.

She claimed Lang made her perform fellatio on him at least 40 times when she was about eight. She described six incidents in detail.

The girl lived in a foster home with four other children. Lang was a frequent visitor. She said the assaults happened when the two were alone together in the basement, a bedroom, and a garage.

Writing for the majority, Appeal Court Justice Kerr Twaddle said it is dangerous to convict a man on the evidence of a child alone, where there are no other facts to back up the story.

The lower-court judge had said she felt the child was telling the truth, but Lang, who testified in his own defence, was not.

Twaddle and Mr. Justice Charles Huband disagreed. There was no evidence "that connected the complainant's account with reality," Twaddle wrote.

"It is well within judicial experience that even the most convincing witness may be an inventive one."

However, in a strong dissent, Chief Justice Alfred Monnin said he couldn't possibly find Lang not guilty.

He noted the girl was "particularly bright" and had a remarkable knowledge of sexual terms. Her detailed descriptions of the fellatio she said Lang committed on her were remarkable, Monnin said.

He added that he would have upheld the four-year sentence, although he found it high.

Lang, who was sentenced last November, spent about three weeks "doing some pretty hard time at Headingley," before he was freed on bail, defence lawyer Stan Nozick said last night.

"He's very, very happy right now."

Courts have always been wary of the evidence of certain people, notably sexual assault victims and children, Twaddle said.

It is unusual to convict someone on a child's evidence alone, he said, noting that one defence witness said Lang had never been alone in the basement with the girl.

"Not only was it possible ... that the alleged incidents were fanciful, but the medical evidence indicatied that not all of the allegations were true," Twaddle said

At the trial, the girl claimed Lang put his finger in her vagina. A doctor testified that while the girl's vagina wasn't injured, it was still possible such an assault could have happened.

Judge Monnin's dissent clears the way for the Crown to appeal to the Supreme Court, but no decision had been made.

Monnin also used the case to comment on the new practice of victim impact statements. He criticized a report prepared by a Winnipeg police child abuse worker, which was given to the judge before Lang was sentenced.

THE WINNIPEG SUN, Friday, April 3, 1987

Crime victim statements defended as filling vacuum in justice system

The author of a crime victim impact statement criticized by Manitoba's chief justice has defended the report.

Social worker Diane Dolski said her reports fill a vacuum that exists in the justice system.

"They're just like the pre-sentence reports that are done on the offender," she said. "They're done to give the courts as much information as possible to make their decision.

"It's up to the judges to decide how much weight to give them," she said.

In a written decision handed down last week, Mr. Justice Alfred Monnin questioned whether such statements — which he called hearsay — should be allowed to become part of the sentencing proceedure.

He said the report in question contained serious unsubstantiated allegations made by the victim's foster mother, as to a nine-year-old's state of mind since being sexually assaulted by the defendant.

In his minority decision, Monnin questioned whether the assault was responsible for the girl's change in behaviour.

Based on interviews

Dolski said pre-sentence reports, which are based on interviews with the offender, his family and other parties, are supposed to give the judges a better idea of what sentence would be appropriate by providing details about the accused's mental capabilities and emotions.

"It's another piece of the puzzle for the judges to put together," she said. "It gives them a better overall picture."

Dolski, who works with the Winnipeg Police Department's child abuse unit preparing children for court, said her statements are not part of a pilot program currently under way in the province.

"That program is restricted to only certain cases," she said. "It's only in three police districts and can only be used if the victim is over 14 years old."

She said Crown attorneys often approach her and request a statement if they feel one is needed.

Monnin made the comments in a minority decision in the case of a 23-year-old Winnipeg man sentenced last fall to four years in prison for sexually assaulting his wife's former foster sister.

THE WINNIPEG FREE PRESS
Sunday, April 5, 1987

Man jailed for vicious beating

' Bob Cox

avid Liberty left court by the it door yesterday and his broth- Paul went out the back to begin ur-year prison term for an attack : permanently disabled a man.

r. Justice Theodore Glowacki uitted David, 23, of assaulting hael Kennedy last March but victed Paul, 27, of aggravated ault.

ociety will not stand for this ' of conduct," the Manitoba rt of Queen's Bench judge said re sentencing Paul, who has a thy criminal record.

POLICE/COURTS

Kennedy, 49, was beaten with a baseball bat and fence picket by three men outside his Pacific Avenue home, an earlier trial heard.

The assault left Kennedy unable to look after himself and he is expected to spend the rest of his life in a personal care home, court was told.

"This must rank as one of the worst examples of this type of offence imaginable," Crown attorney Bob Gosman said.

"For whatever period of time he has left, his effective enjoyment of life has been taken from him.

"One cannot imagine a case that comes closer to attempted murder."

He said the incident resulted from stupid jealousy.

The trial was told five men went to the Kennedy home looking for Michael Kennedy's son John, who had angered the Libertys' younger brother Dwayne by going on a date with his former girlfriend.

Glowacki said he had reasonable doubt David was involved in the beating because of his claims, backed by witnesses, that he was not at the house.

"The court is most suspicious, but under the circumstances must acquit David Liberty of the charge," Glowacki said.

However, he said he was satisfied Paul Liberty was one of the attackers.

The judge noted several witnesses said Paul was at the house.

Also, when the attackers were leaving, one of them said he would be back to get his brother, referring to Dwayne Liberty, whom John had dragged inside the house.

John said his father confronted three men on the front lawn while he fought Dwayne on the porch.

Two other males were charged with Paul and David Liberty after the assault. One was dealt with in youth court and charges against the other were dismissed.

A victim impact statement on Michael Kennedy said he was in hospital for four months after the beating and was readmitted in September and November after suffering seizures triggered by anxiety attacks.

The report said Kennedy has double vision, headaches, constant pain in his head, difficulty sleeping, memory problems and constant anxiety.

"Mr. Kennedy is very nervous now and always looks out the front window before proceeding to go anywhere else in the house. He does not know who or what he is looking for but experiences great anxiety over the 'people' who are coming to get him."

Kennedy was put in a personal care home in December, the report said.

Martin objected to Glowacki looking at the report, saying it was hearsay information based on an interview last November.

Martin did not object to the report being entered as an exhibit after Glowacki said he would adjourn court so the Crown could call witnesses to prove the extent of Kennedy's injuries.

THE WINNIPEG SUN, April 15, 1987

Verdict splits up brothers

ONE FREED, ONE JAILED FOR BEATING

By LINDA WILLIAMSON
Sun Staff Writer

Two brothers charged with cracking a man's skull in a fight over a girl went their separate ways yesterday.

Paul Liberty, who was found guilty of leaving the man permanently handicapped, went to prison for four years for what the judge called his "vicious" act of aggravated assault.

David Liberty, who had an alibi, went free.

The brothers were originally charged with attempted murder on March 18 last year, after Michael Kennedy was injured in a fight outside his home.

In sentencing Paul, Mr. Justice Theodore Glowacki made special note of a victim-impact statement, prepared under the Attorney General's pilot program.

"Mr. Kennedy will likely be in a personal care home for the rest of his life," the judge told Paul, who had already served 10 months in jail awaiting trial.

The statement also said Kennedy had trouble sleeping, recurring headaches and memory lapses, and often looks out the front window in fear.

"He does not know who or what he is looking for, but experiences great anxiety over the 'people' who are coming to get him," victim worker Theresa Clarke wrote.

David's lawyer, Rocky Pollack, called several alibi witnesses, which Glowacki said raised enough doubt that he had to be acquitted.

But he was strict with Paul, who had a previous record for assault.

"Probation means absolutely nothing to you," he said.

CHIEF JUSTICE Alfred Monnin was reported in the *Sun* Mar. 5 as saying victim impact statements are hearsay and have no place in a court of law.

If these statements are are correct, and truly the words of Manitoba's chief justice, why does it say in the Young Offenders Act (1982), "A judge who is considering such an order (payment of compensation to a victim) will take into account the present and future potential of the offender to pay and also the views of the victim."

Under the Constitution, all citizens are guaranteed equality under the law, regardless of age, sex, or religious belief. Therefore, if a victim is allowed his or her views in juvenile court, one would assume the same applies in adult court.

James G. Marles
Crime Victims Advocacy Organization
Manitoba

THE WINNIPEG SUN
Wednesday, May 6, 1987

Victim impact statements and restitution receive justice ministers' support

By David Vienneau
For the National

ST. ANDREWS, N.B. — Victims of crime may soon be allowed to tell a judge before he sentences a convicted offender how the crime affected them physically, economically and emotionally.

And judges would also be required to consider ordering offenders to pay for property damage or bodily harm suffered by their victims, with the compensation order taking priority over any fine that is part of a penalty.

The proposals, which are to be incorporated into the Criminal Code, are part of an attempt by federal and provincial justice ministers to recognize the rights of victims.

Justice Minister Ray Hnatyshyn announced during a two-day meeting with his provincial counterparts that they agreed with his proposed reforms, which are expected to be introduced in the House of Commons later this year.

The proposed reforms would also:

- Result in stolen property being returned to a victim as soon as possible after being recovered by the police, even if it was needed as evidence at a trial.

Ray Hnatyshyn
Criminal code reform

Instead, certified photographs of the stolen property would be submitted as evidence. The accused would have 30 days to object to this procedure.

- Create a criminal law that could make it a crime punishable by imprisonment to ignore a judicial order for compensation of victims.

But the ministers stopped short of endorsing federal plans to make convicted criminals pay a surcharge that would go into a fund to compensate crime victims, preferring instead to offer "general support for the principle."

Hnatyshyn had proposed introducing legislation that would allow each province to decide whether it wanted to create such a fund for individuals convicted of Criminal Code offences.

"The court would be required to consider restitution in all cases involving damage, loss or destruction of property arising from the commission of an offence and where special damages are incurred as a result of bodily harm," according to a confidential document circulated at the closed-door meeting.

The court would also be required to determine the offender's ability to make restitution and, should he be "unable to demonstrate reasonable excuse" for failing to pay, order him imprisoned for failing to do so.

"Where both a fine and restitution is ordered, priority would be given to the payment of restitution," the documents say.

David Vienneau is justice and legal affairs reporter for *The Toronto Star* in Ottawa.

NATIONAL JUNE 1987

Victim impact statements supported

OTTAWA (CP) — A man whose son was murdered by Clifford Olson said yesterday he disagrees with a U.S. Supreme Court ruling that juries cannot consider the impact of a murder on a victim's family in cases involving the death penalty.

Gary Rosenfeldt of Edmonton said he does not believe the intent of victim impact statements is to shock juries into convicting an accused.

"I think the intent is to present to the court a factual account of what the client (the accused) has done to the victim and (his or) her family and to allow the victim some sort of input into the criminal trial process," he said in an interview.

Rosenfeldt said he disagrees with the U.S. court's conclusion that such statements might inflame juries and steer them away from convicting on the evidence.

His 16-year-old son Darren was one of 11 children abducted and murdered by Olson in British Columbia in the early 1980s.

"My son was murdered by Clifford Olson and I didn't have the right to say one word (at the trial)," Rosenfeldt said. "I was left out through the whole process, and I still feel I was neglected and forgotten. . . . I feel that I should have been given the opportunity to stand up and at least talk about the crime, what it has done to me and my family.

"That would have meant something to me, a great deal at the time. . . . It's recognition that you were victimized."

The federal government currently has pilot projects with victim-impact statements in Toronto, Winnipeg, North Battleford, Sask., Calgary and Victoria.

Rosenfeldt and his wife Sharon were in Ottawa to appear before the Commons justice committee to support a private bill by Howard Crosbie, a Tory MP from Halifax, aimed at getting police to help when parents report a child missing.

Rosenfeldt said their son went to a drug store in Coquitlam and never returned. When he had been gone an hour, Mrs. Rosenfeldt went out looking for him and police were called. That night, Rosenfeldt said, a Mountie told him the RCMP would not search for a boy of 16 until he had been missing for 48 hours.

Their son was not found until Olson was paid $10,000 a head to lead police to the bodies. The money was placed in a trust fund for Olson's wife and child. Olson pleaded guilty in 1982 to 11 counts of first-degree murder and was imprisoned for life without parole eligibility for 25 years.

The Rosenfeldts said they support the Crosbie bill as a step in the right direction. They said the problem is that every police force seems to have a different way of dealing with reports of missing children. Uniformity was needed, they said.

Rosenfeldt said parents are turning to private detectives because it is so difficult to get police to search for missing children.

Accident haunts victim

Businessman's life shattered by drunk driver

By Jane Armstrong

Gabor Galovics says he never knew what hit him the night he stopped his van for a red light at a downtown intersection.

He was knocked unconcious after being hurled against his steering wheel from the force of a drunk driver's speeding car.

Galovics says he remembers seeing his passenger Antal Lengyel, dragging him from the crushed van, just in time to watch his vehicle explode into a ball of flames.

The 55-year-old former businessman said his first and last encounter with John Neil Smith ended with him lying on a snow-covered sidewalk screaming in pain, while Smith, also helped from his car by Lengyel, walked away from the accident.

Although initially knocked unconcious from the force of the impact, Galovics says he'll never forget the excruciating pain he endured lying on the road waiting for the ambulance to arrive.

"I remember screaming and screaming because my back and left side felt like they were on fire, the pain was so bad."

When an ambulance crew arrived on the scene, attendants had to cut off his clothes to determine the extent of his injuries. Just touching the injured man, prompted further screams, witnesses said.

Four months after the Feb. 27 accident Galovics said he's still living with daily reminders of the night Smith piled into the back of his van.

He said he's angry he was never notified of the provincial court sentencing hearing last Tuesday in which Smith, 33, was fined $300, the minimum required by law, for impaired driving causing bodily harm.

"He was fined $300 and I've lost thousands of dollars."

Pulmonary contusion

The night of the accident, Galovics said he was taken to the Health Sciences Centre where he was treated for a pulmonary contusion, and released 48 hours later.

However, he said he's still seeing a physiotherapist for his battered knees, shoulder and back.

"I'm a cleaner," he said. "I owned my own business. Now I can't go out and canvass work."

He said he spent the first month after the accident at home in bed.

See **VICTIM** page 4

Victim of drunk driver denied chance to tell of pain, suffering

continued from page 1

And though he started working part time two weeks ago, he said he lost several clients because of months of inactivity.

Gregg Lawlor, the crown attorney who prosecuted Smith's case, conceded it was unfortunate Galovics wasn't notified of the sentencing hearing, but noted the huge number of cases on the dockets makes it impossible for police or crowns to contact victims.

Had Smith pleaded not guilty, Galovics likely would have been subpoenaed to testify, Lawlor said.

But because the man pleaded guilty, Galovics' only possible avenue to have his day in court would have been through the fledgling victim impact statement program, Lawlor added.

However, the Attorney General's Department's pilot project only deals with victims of certain crimes, which at this point, exludes drunk drivers, co-ordinator Theresa Clarke said.

"We still have a limited mandate," she said. "But, I certainly think those victims need to be included in the program."

On Tuesday, Smith's lawyer Crant Clay referred to a presentence report on his client as extremely positive, concluding the man didn't have a drinking problem and was unlikely to drive again while drinking.

For his part, Galovics said he wishes he could have had a chance to describe to a judge the full impact of Smith's actions that February night.

"Everything's changed for me since then," Galovics said. "I just hope he (Smith) he knows what he's done."

WINNIPEG FREE PRESS
SUNDAY, July 12, 1987

Victim impact reports attacked

By Andrew Duffy

Manitoba judges are so inconsistent in their approach to victim impact statements that lawyers face a crapshoot every time they appear in court, a defence lawyer charged yesterday.

"It is almost luck of the draw for the Crown or the defence," Hymie Weinstein told Mr. Justice Aubrey Hirschfield of Court of Queen's Bench.

"You will show up one day and get the victim impact statements accepted by one judge and the next day someone else will reject them."

In arguing for Hirschfield to disregard a victim impact statement in the case of Quoc Ahn Tran — a Vietnamese landed immigrant convicted of sexually assaulting a girl at his going-away party last year — Weinstein said the court has to adopt a consistent view towards the reports.

"Either they have to be accepted or not be accepted."

Hirschfield decided to ignore the victim impact statement, saying he had grave concerns about their value in general.

Subjective reports

"I am concerned about the subjectivity of these reports," the judge said, noting he would rather have the victim testify in court so the evidence could be subjected to cross-examination.

Hirschfield said he had concerns about the preparation of the reports. The statements are written by a person who likely has social psychology training which lends itself to self-serving and subjective questioning of a victim, the judge said.

However, the co-ordinator of the victim impact statement project and author of the report being considered by the court said victim interviews are geared to be as objective as possible.

Theresa Clarke said she interviews victims using a questionnaire, designed to avoid leading questions that would suggest answers.

"This just emphasizes the need for legislation which would allow the impact statements to be entered at the time of sentencing."

Only through changes to the Criminal Code can the place of victims in the justice system be guaranteed, Clarke argued.

Manitoba's victim impact project — one of four federal pilot projects in the country — began in January 1986 and is to end at the end of this month.

Earlier this year, Manitoba Court of Appeal lashed out at impact statements as hearsay evidence. The judges said there is no Criminal Code provision for their use.

In asking the court to accept the victim statement yesterday, Crown attorney Bob Gosman argued the report is no different than letters of reference filed by the defence and routinely accepted by the court.

He said to be consistent, the court shouldn't accept any material unless it is specifically provided for by the Criminal Code.

Tran, 32, of Langside Street was convicted last month of sexually assaulting the girl during a house party March 21, 1986.

Tran, who planned to move to Toronto, was guest of honor at the party, court was told.

Screaming

The victim testified Tran attacked her in the washroom of the home as she was preparing to leave the party. When she resisted and began screaming, he hit her several times, threw her to the floor and began choking her, the girl testified.

Weinstein told the judge Tran was a Vietnamese refugee who came to Canada in October 1984 after spending a year in a refugee camp.

In sentencing the man to 15 months in jail, the judge said Tran may never get the chance to prove he can be a productive member of Canadian society.

Tragically, Tran's foolish and wrongful criminal act could destroy his ability to become a Canadian citizen, Hirschfield said.

Judge throws out victim statement

CALLS SEX ASSAULT REPORT 'SUBJECTIVE AND SELF-SERVING'

By BRUCE OWEN
Sun Staff Writer

Slamming the role victim impact statements play in court, a judge refused to read a sexual assault victim's report yesterday — before sentencing her attacker.

Mr. Justice Aubrey Hirschfield said while the impact of the sexual assault on the victim was obvious, the use of the statement in his judgment gave him grave concerns.

"For me to read the statement, I think would be improper," he said.

Hirschfield said the effect of the assault on the victim — a 19 year-old woman — should have come out during the trial of Quoc Anh Tran June 2, not a day before sentencing.

Tran, 32, was convicted of sexually assaulting the woman at a farewell party for him March 21, 1986.

Speaking through a Vietnamese interpreter, Hirschfield sentenced Tran to 15 months in jail.

Tran, a landed immigrant, was acquitted on a second charge of choking the woman.

The woman, then 17, accused Tran of attacking her in the washroom of the home where the party was being held.

She said Tran tore off her skirt, tights and panties, removed his own clothes and pulled her on top of him.

Others heard her screams and broke into the bathroom, quickly ending the assault.

Hirschfield said the impact of the attack on the woman was obvious in her testimony during the trial — tears and tremors in her voice — but that her impact statement had no value, because it was too subjective.

"To read a subjective statement taken by another person, who may have had training in psychology and who put questions to the victim to get answers, is self-serving and subjective," he said.

The statements — prepared by the attorney general's department as a pilot project — drew fire from the Manitoba Court of Appeal last March because in its opinion the victim's comments equalled hearsay.

Tran's lawyer, Hymie Weinstein, said because of the Court of Appeal's stand on the validity of the statements, the courts have to decide whether to accept all or none of them.

"Some of your brother judges won't accept these and some do," he told Hirschfield. "In my view, it's the luck of the draw (which judge allows the statement and which doesn't).

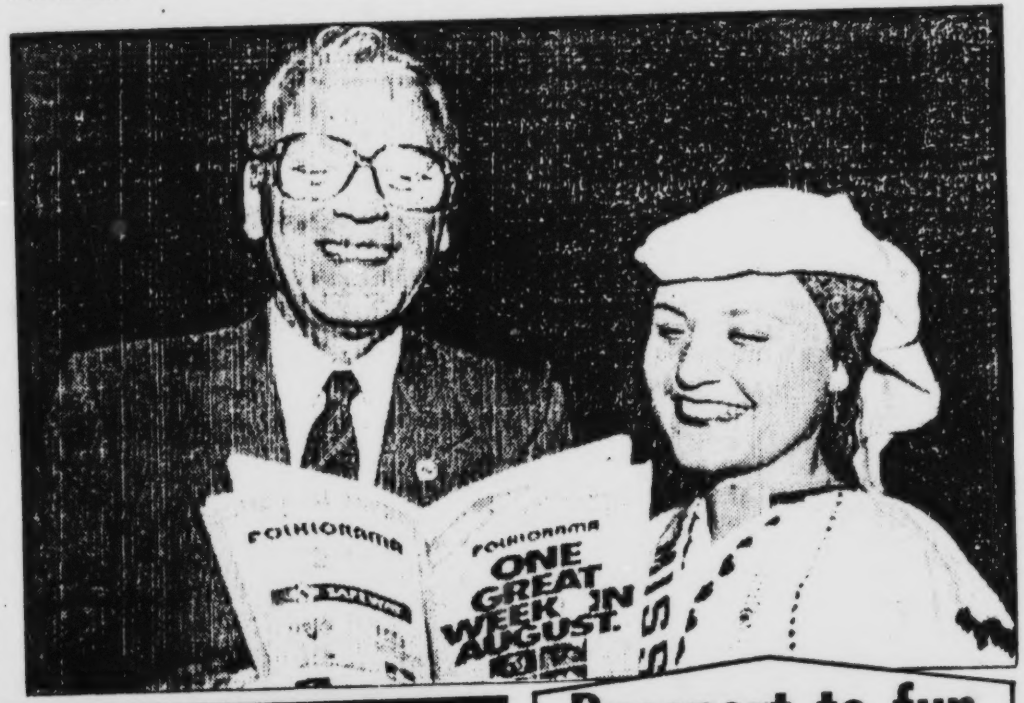
"I'm gently telling the court there has to be some consistency in accepting them or not accepting them."

Theresa Clarke, spokesman for the program, said the statements are important in showing the gravity of the crime. The Criminal Code should be amended to have all such statements allowed in court, she said.

"We all recognize the need for victim impact statements and how to get them in the court in the best manner. That's why we have a pilot project and are pushing for legislation."

Crown Attorney Bob Gosman said the victim impact statements have a limited value for the courts, but that no undue emphasis should be placed on them.

However, he said the court still has to take the impact of the crime upon the victim into consideration in its decisions.



Deadline haunts hawkers

By KEVIN ROLLASON
Sun Staff Writer

Street vendors in Old Market Square will start getting parking tickets in 10 days unless they work out a deal with the square's merchants, councillors said yesterday.

They made the decision after works and operations commissioner Rod McRae told

Passport to fun

Victim report refused

Second judge assails value of comments

By Andrew Duffy

For the second day in a row, a Court of Queen's Bench judge assailed the value of victim impact statements yesterday, saying his duty is to mete out justice, not participate in pilot projects.

After listening to arguments from the Crown and defence, Mr. Justice Sidney Schwartz said he would not read the victim impact statement of a woman assaulted by a man with a knife.

On Tuesday, Mr. Justice Aubrey Hirschfield said he had grave concerns about the subjectivity and general value of the reports, produced as part of a federal pilot project to give victims a voice in the criminal justice system.

However, the co-ordinator of the victim impact project said Manitoba judges are not giving the impact statements a fair chance.

"I believe the pilot project is misunderstood by the judiciary," Theresa Clarke said.

"These victim impact statements haven't even been looked at and already they are saying they don't want them around."

Victim impact statements, she said, have been accepted by judges at the Queen's Bench and provincial court levels, adding it is only in the last two days that successful challenges have been raised.

"It's unfortunate that the courts at this point aren't co-operating," she said.

"I think victim impact statements are going to be around and I think we are going to have to learn to live with that fact."

Manitoba's victim impact project — one of four federal pilot projects in Canada — began in January 1986 and is to be completed at the end of this month.

Clarke said an application has been made to the Justice Department for extended funding which would carry the program to next March.

Schwartz took the position yesterday that if the defence did not want the statement read, he could not accept it.

Schwartz took the position yesterday that if the defence did not want the statement read, he could not accept it.

Not Crown tool

Clarke, however, argued the statements are not always damaging to an accused.

"We are trying to convey that this is not a tool of the Crown attorneys — it's a victim statement," she said.

"And sometimes these statements are going to benefit the Crown and sometimes they are going to benefit the defence.

"Some victims say it happened, I feel better now and I just wish it was over."

For the second time in two days, defence lawyer Hymie Weinstein successfully argued the statement should not be considered by the court in sentencing one of his clients.

Yesterday, Schwartz threw out the victim impact statement in the case of Marc Bedard, 23, convicted of assault with a weapon. He was then remanded to Sept. 2 for a psychiatric assessment.

Court was told a bizarre set of circumstances led to the assault.

Bedard went to a Sara Avenue home June 27, 1986, wanting to use the telephone to call police.

His car had recently been reported stolen and he wanted to find out if police had made any progress in their investigation, court was told.

The woman who lived in the Sara Avenue home, in her mid-30s, allowed Bedard to use the phone, but noticed he was agitated and told him she was leaving — but didn't.

Bedard left but broke into the same home later that evening and was surprised to find the woman inside.

Armed with a knife, Bedard confronted the woman but she talked him into not doing anything, court was told.

He then asked the woman if she could drive him to the police station to again check on the stolen car investigation. When she refused, he made it on his own to the police station where police arrested him

Victim project hits wall in court

TESTIMONY SUFFICIENT FOR SENTENCE: JUDGE

By BRUCE OWEN
Sun Staff Writer

The controversy over victim impact statements continued in court yesterday as the second judge in two days refused to read one.

"Let's get rid of it," Mr. Justice Sidney Schwartz told Crown attorney Pat Flynn, before sentencing a man for assault with a deadly weapon.

"The victim impact statement study, as I believe it, is a test pilot project under the Attorney General's department — your employer, Mr. Flynn," Schwartz said.

"But my duty is to make fit and proper sentences," Schwartz said. "I'm not interested in pilot projects."

Mr. Justice Aubrey Hirschfield turfed a victim impact statement Tuesday, calling it self-serving and too subjective.

Hirschfield said it would be better to have the victim testify in court to allow a proper cross-examination of the evidence.

Schwartz said the impact of the assault — an attack with a kitchen paring knife — on the victim was obvious to the court because of her testimony at Albert Joseph Bedard's trial June 4.

"What the complainant said on the stand is still vividly clear in my mind," he said. "It will play a part in my sentencing."

Bedard, 23, attacked Yuko Horiuchi June 27 last year, after he broke into her home to call police to report his car stolen.

He cut through the woman's basement screen window, took off his shoes, climbed the basement steps and grabbed Horiuchi from behind as she was washing her kitchen floor.

Holding the knife to her throat, he forced her back downstairs, where she thought she'd be raped.

But after several minutes she managed to calm Bedard down and take the knife away.

He apologized, called the police to report his car stolen and left. She then called the police and reported the assault.

Bedard was arrested at the Public Safety Building while he was filling out a stolen car report.

At his trial, he was acquitted of break-and enter.

The judge said he was concerned about Bedard's bizarre behavior — his inappropriate reaction to having his car stolen — and asked for a psychiatric evaluation of Bedard.

His sentencing was put off until Sept. 2. "If he has a problem, he should get treatment," Schwartz told defence lawyer Hymie Weinstein. "If not, he should go to jail.

"Your client has to learn the difference between right and wrong."

Courts focus on accused

By BRUCE OWEN
Sun Staff Writer

If victims of crime are going to go to the trouble of making victim impact statements, Manitoba judges should allow them into court, the program's co-ordinator said yesterday.

"Victims appreciate being given the opportunity to prepare a victim impact statement," Theresa Clarke said.

"Unfortunately, when they've gone through the trouble of filling out the statement and it's not used in court, it doesn't help show the gravity of the offence."

Two Court of Queen's Bench justices have refused to read victim impact statements in two separate cases this week.

Each judge said the statements weren't needed, since anything the victims said in the reports should have come out when they gave testimony in court.

And last March, the Manitoba Court of Appeal lambasted the statements, saying the victims' comments come close to hearsay.

But Clarke said the program, which finishes at the end of this month, helps the victim of crime get involved in the court process.

However, Jeff Gindin, vice president of the Manitoba Trial Lawyers Association, said the impact of crime on a victim does not play a part in Canada's courtrooms.

"It's the accused we're dealing with," Ginden said yesterday. "Judges have to think about the rehabilitation of the accused, his background, attitudes, whether or not he's a dangerous offender and if he shows remorse.

"These are the things judges look at in sentencing.

"The impact of the victim is sometimes very tragic, but the judge's sentencing is not made because of the victim."

For the same offence, he said, two people may be affected totally differently, he said.

"Some are tough and shrug it off and others fall apart," he said. "You get two different stories, yet it's the same crime."

CORRECTION

Transcona Dodge Chrysler ad should have read:

ZERO CASH DOWN
ON EVERY NEW CAR,
TRUCK OR VAN IN STOCK

Our apologies for any inconvenience this may have caused.

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CORRECTION NOTICE

Tinkertown's advertisement that ran in our "Guide to Winnipeg" feature on July 15, 1987, should have read "Buy a wrist ticket for only $5.95 and receive a second wrist ticket for half price! We regret any inconveniences this may have caused their customers.

WATERBEDS
FIRST
✓ YOUR CHOICE ✓ ANY SIZE
ONLY $14999 WITH MATTRESS

WARM-UPS REGULAR

Date Friday July 17, 1987

A word from the victim

Victim impact statements are one of those tiny innovations that every now and then show that the justice system can adapt and evolve. Chief Justice Alfred Monnin has been warning that he thinks some statements of that sort are not proper in a sentencing hearing. He and the rest of the appeal court should take an early opportunity to explain their thinking.

In a sentencing hearing, the Crown has the opportunity to indicate what effects the crime had on the victim and to ask the judge to consider those effects in choosing a sentence. The defence, similarly, has a chance to recall what a fine upstanding citizen the defendant is, the deep remorse he has shown and the steps he has taken to deal with the problems which led to his momentary lapse. Judges, who must keep a grain of salt handy for listening to sworn testimony, keep an extra supply available for submissions of this sort.

The practice has developed in recent years of presenting to the judge a statement written by the victim of the crime — usually with help — which the judge may read out at the sentencing hearing. This practice could become an abuse if it allowed the Crown to induce the judge to believe falsehoods or to consider irrelevancies in deciding on a sentence. Different judges take different views, for there is no codified right of the victim to have such a statement read out, no codified right of the defence to object to parts of the statement, rebut parts of it or forbid the whole thing. It is not absolutely necessary that every trial judge have the same view as every other trial judge. It would be helpful if trial judges knew where the appeal court will draw the line and why.

Free Press

Public confidence in the justice system is sometimes shaken by the gap between the victim's pain and the criminal's punishment. The organizations related to drunk driving, in particular, have grown and flourished because the offence may have been a minor one in the eyes of the law and may lead only to a modest penalty though the victim is dead or mutilated for life. Organizations concerned with rape also express a growing feeling that the victim's interests have not been adequately expressed in the conventional criminal trial.

The victim impact statement is one way in which the victim can at least say something before the sentence is imposed. The victim's expression is tightly controlled by the police and prosecution authorities who supervise its preparation and submit it to the judge and the defence. It is controlled further by the judge's discretion in reading it to the hearing or not reading it and by the opportunity given to the defence to make remarks about the statement. The defence is sometimes best served if the victim is entirely forgotten, but the interests of the defence are not the only ones to be considered. The Crown is representing the interests of the state and of the broader public, which may or may not be the same as the interests of the victim. The victim has a very direct personal interest in the crime and should not be automatically excluded or muzzled.

Victim impact statements have come about for valid reasons and the judges should not try to stamp them out. Their valid purpose should be recognized along with their dangers; their limits should be defined so as to keep them useful.

Date Sat. July 15, Sun July 16, Monday July 17, 1989

Bitter mom slams judges on ruling

Winnipeg Sun

19/07/89

p. 4

By HEIDI GRAHAM
and DONALD BENHAM
Sun Staff Writers

The mother of a sexually assaulted teenager said she's not surprised some Court of Queen's Bench judges refuse to allow victim impact statements in their courts.

"Everything they do seems to be aimed at protecting the criminals," she said Friday.

"Why should this be any different?"

Last week, two judges refused to allow Crown attorneys to submit victim impact statements during the sentencing of the accused.

The statements, part of a federal pilot project started last January, are intended to let the judge know how a victim has been affected by the crime, in the same way pre-sentence reports give more information about the accused.

The province's attorney general's department said despite the judges' action, it will press ahead with the program and ask for an extension of its use.

The mother, whose 15-year-old daughter was forced to perform indecent acts on a 24 year-old stranger last summer, said judges don't seem to care about the victim's pain and suffering.

"They're obsessed with what's happening with the criminal — even though he's the one who got himself in trouble in the first place."

The woman, who asked not to be identified in order to protect her daughter, said the full confession her daughter's assailant gave police was ruled inadmissable by a Court of Queen's Bench judge, who later acquitted the defendant.

"When that happened my daughter burst into tears and ran out of the courtroom," she said. "And she just sat at home and cried when she heard what they were doing with those statements.

"She said if she'd known that was the way they acted she wouldn't have gone to court."

The woman said she and her daughter have lost all faith in the justice system because of the way they were treated.

"Nobody gives a damn about the victims. That's really what this is all about. If they did there wouldn't be any question about whether those statements would be allowed.

"They'd be mandatory."

Attorney General Roland Penner said he believes in the program so much that he has asked that the federal provincial pilot project being tested in Manitoba be extended beyond its scheduled end this month.

"I regret the judges' decisions. It is a pilot project and the courts do receive regularly documents of that kind," Penner said.

Federal Justice Minister John Crosbie has said categorically that the Criminal Code will be amended to allow for the statements, he said.

Victims to say more

By ILANA SIMON
Sun Staff Writer

Victim impact statements will continue to be submitted in courts until the provincial government gets word from the feds on an extension, the program's co-ordinator said yesterday.

Theresa Clarke said the Attorney General's office has requested the federal justice department continue cost-sharing the victim impact statement pilot project.

The program ends today, but Clarke says provincial coffers will cover the costs until Ottawa makes its decision about an extension to April, 1988.

"We expect we'll hear from Ottawa this week," she said, adding an extension to next April would coincide with the termination of an evalution of the project by the federal justice department.

Controversy over victim impact statements has ensued since the program was launched.

Just over two weeks ago, two court of Queen's Bench judges presiding over separate cases refused to read victim impact statements.

Each judge said the statements weren't needed, since anything the victims said in the reports should have come out when they gave testimony in court.

And last March, the Manitoba Court of Appeal lambasted the statements, saying the victims' comments came close to hearsay.

But Clarke says statements are a necessary part of the judicial system and help victims of crime participate more fully in the court process.

As of June 30, 275 victim impact statements were written, and about 60 heard in Manitoba courts, Clarke said.

Many of the cases are pending in court presently, she added.

THE WINNIPEG SUN
FRIDAY, July 31, 1987

Fear of retaliation common to crime victims

Theresa Clarke, who takes statements for the fledgling provincial victim impact program, says the common denominator in victims is their fear of another attack.

"A very common fear among victims is that the accused will seek some type of retaliation, so their problem is compounded," Clarke said.

"Not only do they have to get over the trauma of their attack, but so many of them are looking over their shoulder for another from the same person."

She said statements are usually taken within a week of an attack, and she has seen too many grievous personal injuries to count since the program began in January 1986.

"I've seen everything from people with split-open heads to stab and gunshot wounds," Clarke said.

"I've pretty well seen it all."

She said while some judges have been reluctant to take victim impact statements into account when passing sentence, the program is important because it gives victims a chance to talk out their post-attack fears and apprehensions with a professional.

"We are giving the victim a chance to talk to someone about what has happened to them," she said.

"It's important for them to know that someone cares, and that they have a chance to say how their life has been affected."

THE WINNIPEG FREE PRESS
SUNDAY, AUGUST 2, 1987

Project buoys officials

Victim impact plan expected to be extended

By Allison Bray

Manitoba's pilot project on victim impact statements in courts will likely be extended until the end of next March.

"We're delighted with the preliminary results," said Tanner Elton, deputy minister for the Attorney General's Department.

Elton said in all likelihood the project — which began in January 1986 and officially ended last month — will be extended at least until the end of the current fiscal year.

"I think it's a first-rate program," he said. "It's long overdue because victims need a greater voice in the system."

The project, also being run in Calgary, Victoria and North Battleford, Sask., was introduced on a cost-sharing basis with the federal Justice Department and its provincial counterparts to give crime victims a voice in the justice system.

Carolina Giliberti, research co-ordinator for the federal Justice Department, said the extension is being considered to coincide with an evaluation of the project due in March.

The extension, she said, would cost about $50,000.

Manitoba project co-ordinator Theresa Clarke said the project was set up to give victims a forum in which they can express to the court how the crime has affected them physically and financially.

Inflammatory

"We try to keep emotional implications to a minimum," she said.

But some defence lawyers and two Court of Queen's Bench judges have criticized the statements for being subjec[illegible]

On July 15, Mr. Justice Sidney Schwartz refused to read the victim impact statement of a woman assaulted by a man with a knife.

The day before, Mr. Justice Aubrey Hirschfield refused to read a statement by a 19-year-old sexual assault victim, calling it self-serving and too subjective.

Hirschfield said the victim should have testified during the trial rather than have her statement read prior to sentencing.

Benjamin Hewak, Court of Queen's Bench chief justice, refused to render an opinion on the statements but said he has heard arguments for and against them.

"Some judges feel the information contained in statements is information that can best come from the complainant during the trial."

Hewak said information contained in the statements is second-hand because it is filtered through the social worker or person questioning the victim in preparing the report.

"Those judges who feel it's hearsay have a point," he said. "On the other hand information about the victim may not come out otherwise, so perhaps there is room for them to be admitted."

Despite the criticisms, Clarke said she hopes the statements will become a part of the judicial process.

"We will continue to submit them to the courts and let them decide," Clarke said.

She said once the evaluation of the project is completed, legislation may be forthcoming to incorporate them into the justice system.

THE WINNIPEG FREE PRESS
FRIDAY, AUGUST 7, 1987

Winnipeg Free Press

Sunday, August 16, 1987

Victim statements divide legal community

By Pauline Comeau

The 17-month federal government experiment in victim impact statements is doomed to fail, defence lawyers say.

But Crown attorneys and victim advocacy groups are calling the reports — an outline of the financial, physical and emotional effects of a crime — a much-needed humanization of the legal process.

"Our position is the same as the courts," said Rersh Wolch, president of the Manitoba Trial Lawyers' Association, referring to three Manitoba court decisions against use of the statements.

"It is a complete waste of time. Many of these victims really aren't victims. They're liars."

Judges in three of five Canadian centres where the experiment was launched in February 1986, have rejected some statements for a variety of reasons.

But Manitoba judges have voiced some of the more serious objections.

Three of about 45 statements that made it to Manitoba courts were thrown out and a fourth seriously criticized before being accepted.

"There's an invitation to the community to consider elements of vengeance and elements of inflammation," warned Mr. Justice Sidney Schwartz, the first to reject a statement last March.

Schwartz refused a second statement last month.

In rejecting a third, Mr. Justice Aubrey Hirschfield, another Court of Queen's Bench judge, challenged the entire social-psychological approach of the idea, declaring it self-serving and subjective.

Manitoba Court of Appeal Chief Justice Alfred Monnin delivered a stinging attack against a social worker's report on an 11-year-old's reaction to a sexual assault.

"We try to keep the emotionalism out if it," he said, adding that victims know they may be called to defend what they say.

He then expanded on the entire issue, even though the particular report cited was not part of the pilot project.

"I am throwing a red flag on the field and giving advance warning that in the not-so-distant future serious consideration will have to be given to the propriety of such reports."

But supporters say they're confident the Criminal Code will eventually be amended to include the reports as part of the legal process.

Theresa Clarke, co-ordinator of Manitoba's program, says the information from victims is written in the most objective manner possible and in the starkest terms after an in-person interview.

Clarke said she questions how defence lawyers and judges can accept presentence reports on the accused's background as any less subjective than victim statements.

Giving victims a greater sense of participation has been a concern in the Canadian legal system for about a decade and parallels a growing sense that criminals are getting away with murder.

See CROWN page 4

Crown applauds victim reports

continued from page 1

Lloyd Budzinski, deputy chief of Crown attorneys in Ontario who oversees the Toronto project, said Crown counsels have always stood up in court to present the victim's point, but it hasn't been done consistently.

The victim impact study, conducted in Winnipeg, Calgary, North Battleford, Victoria and Toronto, grew out of a 1983 federal task force examination into the lack of victim assistance.

Originally scheduled to end in mid-May, the federal government is expected to confirm a six-month extension of the project this week.

In every centre except Winnipeg, victim statements have been gathered by local police forces, either in person or by mail, and have become part of the Crown's file to be used if and when deemed useful.

In Winnipeg, the project is run by the Victim Witness Advisory Board. Clarke's reports are presented to the judge, defence and Crown.

Statements are taken in cases of sexual assault, aggravated assaults, assaults with a weapon, assault causing bodily harm, and non-commercial robbery.

Bob Gosman, president of the Manitoba Crown Attorneys' Association, says the statements are a valuable tool and that's the message his organization will take to Ottawa.

"The types of victim impact statements we've been getting have been very well done, very objective."

Gosman said an added plus is that the statements are updated just before the case makes it to court, giving Crowns a clear picture of some of the crime's long-term effects.

Those fighting the statements say judges will be unfairly swayed into slapping harsher sentences on the accused.

Wolch said he believes the same sentence should be handed out for the same crime, regardless of the impact on the victim.

He said victim involvement takes the emphasis away from the purpose and principle of sentencing, which is to apply punishment that will stop the crime from being repeated.

But Clarke and Gosman argue the impact on the victim reflects on the impact the crime had in the community and should be considered.

Gosman said Wolch fails to consider a victim's reaction could just as easily result in a lighter sentence.

Winnipeg Free Press

Sunday, August 16, 1987

Victim impact reports tell of pain, salary loss

Theresa Clarke, co-ordinator of Manitoba's section of a federal study on victim impact statements, has conducted more than 300 in-person interviews with victims of crime in Winnipeg during the past 17 months.

Following an hour-long interview, Clarke writes up a brief report, usually a page or two, to be read by the judge, Crown and defence before an accused is sentenced.

Those opposed to the statements say they introduce emotionalism and vengeance into the courts and sway judges into handing down harsher sentences.

Clarke and others say the victim's financial, emotional and physical suffering should be taken into consideration.

Here are two examples of reports that have been used in Manitoba courts. The names and other identifying facts have been changed to protect the identity of the victim but otherwise the language is the same.

☐ Mr. Jackson described having received two black eyes during the incident, which remained swollen and blackened for 1½ weeks.

He said following the incident he had headaches for approximately two days. Mr. Jackson stated that he missed three days of work following the incident because he was embarrassed about his appearance.

He lost $236.40 in wages; that is eight hours per day, at $9.85 per hour for three days.

Mr. Jackson described himself as feeling humilitated by his peers. He said he didn't like people looking at him and asking questions.

The accused person's sister, Mr. Jackson's girlfriend, is mad at him as a result of him phoning the police and pressing charges.

Hospital

☐ Following the assault Mr. Sanchez was admitted to the Seven Oaks Hospital where he subsequently spent three days.

Mr. Sanchez works for Company X, a job that requires a lot of physical labor.

Mr. Sanchez stated that because of the pain and discomfort he was unable to return to work for 3½ weeks.

He had accumulated sick leave, however he did not have enough sick leave accrued to cover the full 3½ weeks. (His loss in wages was estimated between $600-$700.)

As a result of the assault, Mr. Sanchez stated his property loss was a complete set of clothes — shirt, pants, shoes, vest. He estimates the value of his clothing at approximately $100.

Mr. Sanchez stated that the incident has affected his attitude towards the safety of the general public, as he feels no one is safe at any time and he must be aware of this.

He said he fears for his family and friends. Mr. Sanchez stated that he wondered why such types of incidents occur.

Brothers get two-year term for assault

Two brothers convicted of teaming up to sexually assault a teenage girl were both sentenced to two years in jail yesterday.

Marshall Mark Brown, 21, apd William Ernest Brown, 25, were were convicted Sept. 3 of sexually assaulting a girl, 14, after dragging her into the bedroom of their Manitoba Avenue suite July 19.

Court heard one of the men sat on the teenager's chest while the other sexually assaulted her.

Mr. Justice Michel Monnin of Court of Queen's Bench sentenced both brothers to two years less one day even though the victim indicated her only desire was to receive her clothes back from the police.

Reading from the woman's victim impact statement, Crown attorney Rick Saull said the teenager did not express an opinion about what type of sentence she would like the men to incur.

She just wanted her clothes — taken by police as exhibits in the case — returned to her, Saull said.

In fact, the teenager said she has re-evaluated her lifestyle since the incident and now abstains from sex and alcohol, Saull said.

Court heard the teenager was drinking and had sex by consent with two men earlier on the night of the attack.

Lawyers for the two men had argued the teenager's story was open to question because of the earlier sexual encounters.

WINNIPEG FREE PRESS
FRIDAY, SEPTEMBER 25, 1987

from Chatelaine 12-1987

Do VICTIMS DESERVE A SAY IN COURT?

Some legal experts don't think so, but police and prosecutors, involved in pilot projects across the country, applaud the idea. So do Mona and David Hampel, who, with their young children, suffered emotional and financial consequences when an arsonist turned their dream home to ashes

Mona and David Hampel (above with McLean, 2, and Pamela, 5) were devastated by the loss of their home.

BY SUZANNE ZWARUN

Mona Hampel, 32, vividly remembers the phone ringing in her parents' home in Elliot Lake, Ont., at 9 A.M. on December 22, 1986. Mona glanced inquiringly at her husband, David, as he answered and suddenly felt a shiver of apprehension. David, 34, was being uncharacteristically silent as he listened to the caller intruding on their Christmas holiday. "Mona, pick up the other line," he finally blurted. His wife snatched up the telephone and heard her next-door neighbor back in North Battleford, Sask., say: "I'm calling to let you know there's been a terrible tragedy. Your house is on fire."

"You're kidding," Mona said stupidly, even as she realized she could hear fire sirens in the background. Her throat seized up. "I couldn't talk, didn't get any of the details. I just hung up." As the horrifying day went on, North Battleford R.C.M.P. filled in the facts.

As they reconstructed events, the house had been broken into while the Hampels and their children, Pamela, 5, and McLean, 2, were on holiday, probably by a neighbor, who then decided to torch the place to conceal the break-in. But as the arsonist splashed the house with gasoline, he too caught fire. Having found a spot in the backyard where he apparently rolled in a desperate effort to stifle the flames engulfing his clothes, police followed footprints in the fresh snow to another house and subsequently arrested the suspect, 19-year-old Murad Camgoz, in hospital, where he had been taken for medical treatment of his burns.

Mona and David Hampel had worked grueling years to acquire their dream home. Now, their dream was in ashes, virtually all their possessions lost forever. "Your whole life gets turned upside down," says Mona. "It's a terrible financial situation, but there's so much more—marriage problems, trouble with the kids. You're yelling at each other, you're so on edge. The kids keep asking for toys that are gone, and when you remind them of the fire, they start crying, and that sets me off again."

David Shiplett, coordinator of North Battleford's victim-impact-statement program, extended the helping hand that got the Hampels *Continued on page 114*

DO VICTIMS DESERVE A SAY?

Continued from page 62

through the nightmare. After the couple returned to Saskatchewan, he arrived to interview them about the crime's effects on the family. For two hours, he listened as the Hampels spilled out their hurt and sorrow. Then, he prepared their statement, which would be taken into consideration during the trial of the alleged arsonist.

Mona had been so shattered by the loss that she couldn't bear to go near the gutted house. Friends had helped David haul out what was left and stored it in their garages. Then, the couple spent months salvaging what little they could.

Telling Shiplett about their trauma really helped, they found. "It was nice to talk to someone who really listened. I was able to release the burden I was carrying," says Mona. And with the burden released, she was even able to spare a sympathetic thought for Camgoz, the man accused of ruining her home. As she told Shiplett, she has mixed feelings—she couldn't help but feel concern because the suspect had a tragic background but she was also angry about what he took from her children.

Until recently, the Hampels' troubles would have been theirs to bear privately. But with the emergence of the victims' rights movement in Canada, Crown prosecutors, who have traditionally represented all the interests of the state in criminal cases, are being told what victims feel about their injuries. Some defence lawyers argue that emotional outpourings have no place in court cases. But proponents of victim-impact statements say that this is a way to recognize there are three major parties to criminal justice—the offender, the state and the victim—and that the victim has, for too long, been ignored by the system.

Periodically, crime victims or their families have been able to testify about how a crime has affected them physically, emotionally and financially. But victim-impact statements have had no legislative basis, and their use has depended on judicial discretion. Now, more than 40 American states have incorporated victim-impact statements into their judicial systems, and the federal Department of Justice, looking at ways to give victims a larger role in the criminal process, appears to be leaning the same way.

The decision on whether Canada will adopt a routine nationwide system of gathering victim-impact statements depends on the outcome of pilot projects funded by the federal government. Victoria began collecting victim-impact statements in November 1985; Calgary, Winnipeg and North Battleford followed suit early in 1986; Montreal began a fifth pilot project this year. Each project is administered differently, so evaluators can weigh the advantages and disadvantages of each. None allows a victim to speak his or her piece in court.

A full analysis of the projects won't be completed until next March, but it is already clear that victims often suffer damages beyond their obvious physical injuries or financial losses. Information revealed by the statements should lead to fairer court decisions. The initial reaction from police and prosecutors involved in all the projects has been positive, and coordinators are hoping victim-impact statements will become a permanent part of the judicial process.

Certainly, the Hampels applaud the new effort to give victims a voice. Their statement was the only means they had to express their emotional trauma, to talk about their insurance disputes and their sentimental losses—such as the cherished crib passed from David to his children, the crib destined for another baby they now fear they won't be able to afford.

Raised in Elliot Lake, where their parents were among the founding families of the mining town, Mona became assistant manager of a finance company, while David ran his own trucking firm. They married in 1980 and decided to strike out for Tumbler Ridge, B.C.

"It was really nice to talk to someone . . . I was able to release my burden."

They arrived in January 1983, knowing they had a once-in-a-lifetime opportunity. With both of them working long hours at well-paid jobs, they'd be able to stake themselves to a good life. David worked as vehicle foreman at the mine, while Mona abandoned office work for an industrial first-aid and security job. They made a lot of money—$120,000 a year between them—building up equity in the company house they purchased and filling it with fine furniture they expected would last them a lifetime.

David had been keeping his eye out for a chance to get into business for himself, and the opportunity came when he was invited to join friends in a North Battleford investors' group called Plains Cree Investments. On October 1, 1986, the Hampels moved into an $84,500 split-level in one of the community's most luxurious neighborhoods. The house, only 12 years old, was in excellent repair, but they repainted and recarpeted. They planned to do more—"All the dreams we had for that house . . ." sighs Mona sadly—but suddenly, they were caught up in Christmas preparations.

It would be the first Christmas spent with their parents since they'd left Ontario, and Mona was as excited as they were about the prospect. Mindful of her mother's request to bring pictures of the new house, she went from room to room taking snapshots.

The pictures later helped to document the Hampels' insurance claim. But they needed a lawyer, which cost them $3,000, to negotiate the rebuilding of their home, insured for $88,000 by Saskatchewan Government Insurance, and to secure for them the $58,000 at which their contents were insured. As they sat up night after night until midnight compiling a list of all they had lost, Mona and David were appalled when their estimated replacement costs hit $132,000. At that point, they quit completing the list in frustration—they were never going to get more than $58,000 back.

The emotional trauma was equally real—Mona and David required sleeping pills and tranquilizers to get them through the first few weeks of the ordeal. Five-year-old Pamela, installed in a streetside bedroom in their rented house, awakened every time someone passed by outside, crying out to her mother that "that man" was trying to break in. Mona now barricades the doors "as if we were living in New York" and once had a panic attack while shopping when a cashier casually (and erroneously) told her the arson suspect had been released on bail. And while the new house was to be ready by midsummer, Mona, who had steadfastly refused even to look at it while it was being built, dreaded the prospect of moving in and rekindling the memories of all they had lost: "I don't want to live in that house again."

The Hampels' nightmares are no surprise to officials involved in the victim-impact-statement programs. Admits Calgary Police Constable Peter Joosten, who assembled that city's proposal: "Things we'd written off—ordinary break-ins—turned out to have unbelievable after-effects: kids not sleeping, acting up, reverting to bed-wetting, having to see a psychologist. Some people wouldn't move out of their house for weeks or they turned their houses into fortresses. They have insurance problems. And they feel guilty, that it must be their fault."

Defence lawyers fear such personal turmoil could introduce an unseemly emotionalism into courtroom proceedings. The Canadian Bar Association has given cautious approval to the regular use of victim-impact statements at sentencing hearings, provided defence lawyers are also given the right to present them to the court on behalf of their clients. But in a 1986 response to the Department of Justice's proposals, the association strongly opposed any change in the rules governing▸

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CHATELAINE

the admissibility of evidence.

"I can't say I'm really happy about the statements," says Don MacLeod, a Calgary lawyer and member of the bar's criminal-justice section. He points out that the accused person's basic right to face the accuser could be violated if unsworn, perhaps inaccurate and irrelevant statements become a matter of court practice. "The very basis of criminal justice is that the accused is entitled to a fair and impartial trial on charges that are the Attorney General's, not the victim's. Society is the victim. The complainant is one as well, but the effects on the complainant are only one factor to be considered. The victim shouldn't be forgotten, but a trial is not the victim's forum to seek revenge."

But coordinators of the victim-impact-statement projects have found, to their own surprise, few vindictive victims. "I'm more for rehabilitation than incarceration," says Mona of Camgoz, who was found guilty of break, enter and theft and arson and sentenced in June to 19 months in jail.

David, on the other hand, followed the proceedings avidly. He was called upon to testify but, like most victims, had no opportunity to tell the court anything but the barest of facts—this was his house, and he certainly hadn't left it in the condition he'd found it when he returned. For the rest of the trial, he sat in the courtroom, fuming because he feared defence lawyers would succeed in destroying the Crown's case. But thanks to the victim-impact-statement project, the Hampels finally got their "say." Before sentencing took place, Shiplett's summary of their trauma and insurance troubles was reviewed. If the statement didn't restore their home, at least the Hampels' situation had been taken into account.

Victims often have been forced to sit in court and listen to witnesses testify as to what an upstanding citizen the offender really is, without ever getting the opportunity to say how hurt they had been by the offender's acts. Victim-impact statements, while still on trial themselves, seem to restore some balance. As Victoria Police Constable Doug Holmes, who was a project worker there, puts it, it's as if "a missing link got put in place and connected the justice system."

The Hampels are reminded, almost daily, of their loss. "We're starting over and we're not in a situation to do it quickly," says David bitterly. But they're determined to do it. Given Mona's antipathy to the rebuilt house, they sold it without moving in. Pamela still wakens sometimes fearing for her life, but her parents are sure, given the resilience of youth, that she's over the worst. "Time does heal," says Mona. The people running the victim-impact-statement projects believe that they have played a part in the healing and that, one day soon, all victims of crime will have their "say" in court.●

MORE DARE

Continued from page 24

Drapery, pillow and sofa trim, tassel on key, Reid & Lyons. Moiré drapery fabric, Pride of Paris Fabrics. Floral and William Morris print fabrics for pillows, Arthur Sanderson & Sons. Living-room design, Norma King. Sofa, Babcock Zanner. Chair fabric and trim, Brunschwig & Fils.●

BLACK AND WHITE

Continued from page 84

Living room Raku vessel on mantel, Peter Powning. *Pleine Lune* painting on mantel, Sylvie Gélineau. Blown-glass vase on console, Jean Vallières. Ceramic bowl on console, Ken Cumberland and Mary Ann Dailey. *The Room* sketch on pillar and *Driveways of the Rich and Famous* painting, Stephen Lack. Papier-mâché dog, Micheline Larose and Georges Gamache. Blue blown-glass vases, Peter Gudrunas.

Kitchen Ceramic vase, Ali Ross.

Bathroom Ceramic vase, Diane Codère.

Most of the artists mentioned above are taking part in the One-of-a-Kind Canadian Craft Show in Toronto (November 27 to December 6), produced by Steven Levy tin Rumack.●

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News

Criminal lawyers condemn victim impact statements

By David Law
Special to Lawyers Weekly

TORONTO—The criminal justice system may be "relatively successful," federal MP David Daubney told those gathering at the Criminal Lawyers Association (CLA) annual convention, but sinking public esteem is forcing the government to take steps towards "restoring faith in the justice system."

Mr. Daubney, a Conservative member and Chairman of the Parliamentary Committee on Justice and Legal Affairs, told the advocates that proposed federal legislation permitting the use of "victim impact statements" in criminal trials might give the law "more legitimacy in the eyes of the public." But many at the November 7 convention here strongly disagreed.

"It's gone too far," William Trudell told *The Lawyers Weekly*. Mr. Trudell, secretary of the CLA and a partner at Toronto's Caroline, Trudell, believes that recently announced legislation on victim impact statements and victim compensation are little more than a bid for votes, rather than a serious effort to reform the system.

It's worth a lot of votes to give cash to victims," Mr. Trudell says, "but there's no votes in hiring more Crown attorneys or giving Provincial Court judges raises."

He thinks prosecutors should be given the time and resources to deal with criminal cases properly, rather than abdicate part of their function to "third parties" wielding victim impact statements.

Mr. Trudell agreed with the comments of Mr. Justice David Watt of Ontario's Supreme Court that victim impact statements are often drafted by expert lobbyists, rather than by the victims themselves.

"A good many of them don't represent the victim's own words," Justice Watt told a panel group, noting that the language contained in prepared written statements is often strikingly different from the spoken language of the supposed drafter.

Victims have historically been witnesses, William Trudell told *The Lawyers Weekly*, and Crown attorneys have always carried the responsibility to convey the victim's plight to the court.

Trial judges often call upon the victims of crime to testify as to sentence, and according to the Ontario Supreme Court's Mr. Justice John O'Driscoll, such testimony does affect the sentencing process. He cautions that courts "should be wary of pieces of paper being handed-up" to the Bench in lieu of personal testimony.

Chris Evans, an Alberta Law Society Bencher and partner at Calgary's Evans, Bascom, told *The Lawyers Weekly* that although the victims' "pressure groups' points were well taken" the widespread use of impact statements would introduce a dangerous mood of confessionalism to the courtroom.

"There is a constituency of the greater public now calling for retribution on the part of victims," Mr. Evans said, "but I don't think there's any place for retribution in the criminal justice system."

Mr. Evans, once a Crown Attorney, describes the justice system as "inhuman" and liberal in to the cold de-personalization of modern medicine. But that atmosphere is essential to a fair trial, he contends, and victims shouldn't be encitled to inject anger and grief into the process.

"It is not a party and party system—it is the state against an individual for anti-social conduct."

David Doubney sees a "therapeutic" potential for unhappy victims in the introduction of victim impact statements, but that hasn't convinced Chris Evans. "Therapy can be done on a psychiatrist's couch," he says bluntly. "And people can get public assistance to get help."

Mr. Evans sees the prejudicial effect to an accused as far outweighing the potential benefit to the esteem of the system.

Judge Charles Scullion of Ontario's Provincial Court thinks the victim impact statements can be "very emotional" and noted: "I think I should hear far more objections" to the introduction of victim impact statements.

Public interest in the plight of the victims of crime is "a very civilized thing" according to Mr. Justice John Brooke of the Ontario Court of Appeal, but courts are already well aware of a victim's losses and don't normally need to be reminded of them. Mr. Justice Brooke sees serious dangers in giving the victim more significance in the courtroom.

"Some people complain and others do not," the judge told a panel group. Cultural, educational, economic and personal differences will lead some victims to cry out, but others not, "and yet the hurt is the same."

With the admitted effect a victim's words can have on a judge rendering sentence, Mr. Justice Brooke finds here a disturbing inequality. "Is it warranted disparity?" he asked the lawyers listening. "That's your problem."

Chris Evans found this dilemma daunting during a mock sentencing exercise held at the CLA meeting. Representing the "accused," Mr. Evans faced the testimony of the wife of the "victim" in the staged proceeding presided over by Judge Edward Wren of Ontario District Court.

The victim's wife regaled the "court" with a near-hilarious litany of injuries alleged to stem from the "crime." Mr. Evans objected, saying that "if all accused are equal before the law, all victims should be equal before the law."

Earl Levy, president of the CLA, concurred: "There may be some kind of catharsis where a victim tells the court how an event has affected them," but the emotional impact of a statement by a victim who has elected to speak will invariably affect the sentence meted out.

Considering the unique circumstances of each victim, "a sentence becomes a matter of luck," says Mr. Levy, depending upon who it is an offender has chanced to victimize.

The victim impact statement can become fraught with complexity, too, according to Judge Patrick LeSage of Ontario District court, when you ask "who is a victim." Although he will accept them when tendered, Judge LeSage doesn't like written statements and noted that he is more sympathetic to persons actually victimized by criminals rather than their relatives. But he noted he would alter his approach in homicide cases.

Mr. Justice Brooke was more circumspect in his evaluation of written impact statements. "You've got your hands full when you use these things," he said, because inevitably question of proof will be raised by defence counsel trying to offset the damage done to an accused.

The judge anticipated that a difficult and unpleasant cross-examination of victims will erupt if written statements came into common usage.

The suffering of persons affected by crime has been rightly addressed by the public. "For years and years the victim was a forgotten person in the process," the judge stated, but bringing the victim into the system without jeopardizing the rights of the accused will be tricky.

"I agree with Chris Evans when he says 'all victims should be equal,'" the judge said. "As the judge in a lot of homicide cases, I have to agree with that."

Ontario justice John O'Driscoll: Beware of paper being handed to Bench.

Judges differ markedly in findings of appropriate term for mock offenders

TORONTO—They may have looked like a jury of Soviet ice-skating judges, but the five men holding up scorecards at the annual Criminal Lawyers' Association convention were actually members of the Ontario Bench, taking part in a sentencing exercise that was a highlight of the two-day event.

After viewing a morning demonstration on submissions to sentence, the judges offered a wide variety of reasons and results in the case of "Ed and Sally Jones," a married couple who turned to crime in order to keep their import-export business afloat.

In the fact situation prepared by the CLA for participants, the Joneses found themselves facing sudden financial ruin; the timely inducement of an undercover policeman led the pair into converting their enterprise into a drug-importation ring.

So desperate was the couple that it got mixed up in a robbery as well, leading to charges of assault, theft and trafficking. Pleading guilty, the Joneses found themselves at the mercy of five of Ontario's most distinguished judges.

Least merciful of all was Mr. Justice David Watt of the province's Supreme Court. A former Crown attorney, Mr. Justice Watt sent the pair up the river for four years each—despite the fact that "police conduct falling short of entrapment" had lured the duo into crime in the first place.

Gentler was Judge Patrick LeSage of Ontario District Court, who has a soft spot for families.

"I would have fiddled with the figures to keep Mrs. Jones in a reformatory and closer to the children," the judge told interested listeners. He gave the couple "two years less a day if they had kids, three years if they didn't."

One judge at the event implied that he tends to go lightly on some sentencing matters because he knows the Court of Appeal will correct him if he's wrong.

"The sentence is a human operation, and it's not pleasant," Mr. Justice John O'Driscoll told the audience.

A member of the Ontario Supreme Court, Mr. Justice O'Driscoll said: "As a trial judge, there's always one thing in the back of your mind—I call them as I see them and I know there's a safety net out there—the Court of Appeal, who can adjust the sentence."

Judge Charles Scullion of the Provincial Court (Criminal Division) said he seldom considers whether a sentence will be appealed.

"In a Provincial Court you don't have enough time to worry about what the Court of Appeal says. You look at the cases and that's it."

He adds that sentencing seminars held by Provincial Court judges in conjunction with the Court of Appeal are enabling the lower courts to move out more consistent sentences.

Judge Scullion noted that while he is "not averse" to accepting joint submissions as to sentence, he is seeing a new trend developing in the Provincial Courts—experienced defence counsel are getting the better of greenhorn Crown attorneys.

"At one time you had to protect inexperienced defence counsel," the judge remembered, "but now the pendulum has swung the other way."

Mr. Justice O'Driscoll echoed Judge Scullion's concern, and warned defence counsel that joint submissions will not always be followed by judges who see inexperienced lawyers grappling with more senior counterparts.

The Supreme Court justice also expressed worry that some accused are being induced to plead guilty by the promise of a sentence that can never be guaranteed. Nevertheless, he is reluctant to enquire into the process that leads an accused to enter a plea in exchange for an agreed sentence.

Ontario justice David Watt: Despite near-entrapment, four years to person.

Ontario judge Patrick LeSage: A soft spot for families means reformatory.

"Who am I to get into it?" the judge asks.

Mr. Justice Watt was less deferential to the lawyers in such an instance, because he is concerned that defence counsel may be advising their clients to plead guilty for a lesser sentence "where the facts might not otherwise justify" such a plea.

Mr. Justice Watt noted that he is not above reminding an accused that sentences agreed upon by counsel are not binding on the court, and allowing the alleged offender to change his plea.

A controversial element in the day's proceedings was the use of a "victim impact statement" by prosecutor Michael Dambrot of the Federal Justice Department.

Each of the five judges who took part in the mock-sentencing discussed the implications of the written or oral testimony of a victim, but few were as frank as Judge LeSage who admitted that, upon hearing the wife of the assault victim, he automatically escalated the sentence he was prepared to give.

Lawyers attending the CLA conference got their first lesson in the vagaries of sentencing from Judge Scullion.

While other judges on the panel gave the drug-importing, restaurant-robbing couple up to four years of incarceration, Judge Scullion sentenced the pair to a mere 18 months in prison. He told laughing onlookers: "That's why they come to Provincial Court!"

Impact statements: Will criminals become victims of vengeance?

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OTTAWA — Allowing victims to tell a judge how a crime affected them physically, emotionally and financially before an offender is sentenced could result in a revenge-based criminal justice system, some CBA members say.

"It could inject a vengeance factor into sentencing and that is a bad factor," Winnipeg defence lawyer Rocky Pollack said. "It also creates an expectation on the part of the victim that there will be vengeance."

Michael Neville of Ottawa said the criminal justice system should not be used to "get even. If a guy should be sentenced to six months, it is wrong to give him 12 months because there is a particularly angry complainant."

Pollack and Neville were among a group of defence lawyers who were asked by *The National* to comment on the federal government's proposed Criminal Code amendments that are intended to formally recognize the rights of victims.

The package would formalize the use of victim-impact statements, require judges to examine the issue of compensation and impose fine surcharges of up to $10,000 for anyone convicted of a Criminal Code or drug-related offence.

The court would be required to consider restitution in all cases involving damage, loss or destruction of property, and money spent because of bodily injuries as a result of the crime.

The court would assess the victim's loss and the offender's ability to pay. Normal rules of evidence would apply following any victim impact statement.

Neville, while supporting the thrust of providing assistance to victims, says such statements could lead to a number of problems.

"How is it to be implemented without turning the criminal process into a quasi-civil litigation process?" he asks. "Sentencing in fraud or theft cases could result in mini civil trials."

"The courts are already burdened down. Do we want to turn every sentence procedure into three hours instead of one hour?"

Neville said in break-and-enter cases many detectives already have a high degree of scepticism with regard to how much victims claim to have lost.

"The area is fraught with difficulty," he said. "When someone claims they have lost pay, the problem is should there be compensation for three days or two days. Who says it is three days? Everyone of these penalties is a new trial."

Pollack said knowing in advance that they would be allowed to tell a judge how the crime affected them could unrealistically boost the expectations of victims and jade their memories even before they take the stand.

"They will have yet to testify, yet there will be an expectation there," Pollack said. "You have to be very careful when you start to codify these things."

Joel Pink, who admitted he had seen only press accounts of the proposed law, said Justice Minister Ray Hnatyshyn should have attempted to provide guidelines defining exactly who is considered a victim.

"There is a great feeling among victims that it extends beyond the immediate victim and should include his family," he said. "I am in favor of extending it to cover the family of murder victims or someone accused of criminal negligence causing death."

Hnatyshyn said that compensation could not be ordered for pain and suffering or death because there is no way of putting "an ascertainable value on this."

Pink said he was not concerned about the surcharge proposal. He said if a client admits to a crime and he has caused injury or damages then he should pay for it.

The revenue from the surcharge fines would be used for provincial and territorial programs and services for victims of crime. It would allow for a maximum of 15 per cent of any fine imposed or a flat fee in an amount not greater than $10,000 where no fine is imposed in addition to any fine or other punishment.

If, however, the offender had no money or property, it is unlikely he would be ordered to make restitution.

"You can't get blood from a stone," Hnatyshyn said.

The federal-provincial working group on justice for victims estimated that in 1983 if all Criminal Code convictions had been surcharged $20, approximately $7 million would have been raised.

Hnatyshyn is also proposing to protect the identities of victims of sexual offences and extortion by making it illegal for the media to name them.

The government also plans to provide $27.2 million to the provinces and territories for victims' programs, $16.2 million of which would be for compensation boards.

Les amendements proposés au Code criminel par le gouvernement fédéral font [illegible] pour des programmes et des services au profit des victimes du crime, dans les provinces et les

APPENDIX P

CUMULATIVE STATISTICS

February 17, 1986 - February 29, 1988

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	219	95	50	364
VIS AGREED TO *	2	0	0	2
REFUSALS	102	42	13	157
CLOSED	351	128	41	520
Totals	674	265	104	
			Total Referrals	1043

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	330	34	0	364
VIS AGREED TO *	2	0	0	2
REFUSALS	144	13	0	157
CLOSED	144	279	97	520
Totals	620	326	97	1043

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
Feb. 17-28, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	10	6	1	17
VIS AGREED TO *	0	0	0	0
REFUSALS	4	0	1	5
CLOSED	7	2	0	9
Totals	21	8	2	

Total Referrals for February 31

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	17	0	0	17
VIS AGREED TO *	0	0	0	0
REFUSALS	5	0	0	5
CLOSED	2	6	1	9
Totals	24	6	1	31

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
March, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	20	4	3	27
VIS AGREED TO *	0	0	0	0
REFUSALS	3	4	0	7
CLOSED	8	3	1	12
Totals	31	11	4	

Total Referrals for March 46

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	27	0	0	27
VIS AGREED TO *	0	0	0	0
REFUSALS	7	0	0	7
CLOSED	2	7	3	12
Totals	36	7	3	31

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
April, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	8	6	1	15
VIS AGREED TO *	1	0	0	1
REFUSALS	5	1	2	8
CLOSED	13	4	0	17
Totals	27	11	3	

Total Referrals for April 41

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	10	5	0	15
VIS AGREED TO *	1	0	0	1
REFUSALS	8	0	0	8
CLOSED	6	6	5	17
Totals	25	11	5	41

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
May, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	12	2	2	16
VIS AGREED TO *	0	0	0	0
REFUSALS	4	0	0	4
CLOSED	16	0	5	21
Totals	32	2	7	
		Total Referrals for May		41

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	15	1	0	16
VIS AGREED TO *	0	0	0	0
REFUSALS	4	0	0	4
CLOSED	6	12	3	21
Totals	25	13	3	41

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
June, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	12	5	4	21
VIS AGREED TO *	0	0	0	0
REFUSALS	3	0	1	4
CLOSED	20	7	1	28
Totals	35	12	6	

Total Referrals for June 53

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	19	2	0	21
VIS AGREED TO *	0	0	0	0
REFUSALS	4	0	0	4
CLOSED	3	16	9	28
Totals	26	18	9	53

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
July, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	11	6	2	19
VIS AGREED TO *	0	0	0	0
REFUSALS	4	1	0	5
CLOSED	18	4	0	22
Totals	33	11	2	

Total Referrals for July 46

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	17	2	0	19
VIS AGREED TO *	0	0	0	0
REFUSALS	5	0	0	5
CLOSED	2	12	8	22
Totals	24	14	8	46

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
August, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	7	6	0	13
VIS AGREED TO *	0	0	0	0
REFUSALS	6	3	0	9
CLOSED	12	6	0	18
Totals	25	15	0	

Total Referrals for August 40

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	10	3	0	13
VIS AGREED TO *	0	0	0	0
REFUSALS	8	1	0	9
CLOSED	5	8	5	18
Totals	23	12	5	40

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
September, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	15	4	1	20
VIS AGREED TO *	0	0	0	0
REFUSALS	3	4	0	7
CLOSED	19	5	6	30
Totals	37	13	7	

Total Referrals for September 57

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	17	3	0	20
VIS AGREED TO *	0	0	0	0
REFUSALS	6	1	0	7
CLOSED	8	15	7	30
Totals	31	19	7	57

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
October, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	13	6	2	21
VIS AGREED TO *	0	0	0	0
REFUSALS	7	0	1	8
CLOSED	24	1	2	27
Totals	44	7	5	

Total Referrals for October 56

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	20	1	0	21
VIS AGREED TO *	0	0	0	0
REFUSALS	8	0	0	8
CLOSED	14	11	2	27
Totals	42	12	2	56

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
November, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	5	2	1	8
VIS AGREED TO *	0	0	0	0
REFUSALS	2	1	0	3
CLOSED	7	5	2	14
Totals	14	8	3	

Total Referrals for November 25

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	7	1	0	8
VIS AGREED TO *	0	0	0	0
REFUSALS	3	0	0	3
CLOSED	3	8	3	14
Totals	13	9	3	25

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
December, 1986

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	10	0	2	12
VIS AGREED TO *	0	0	0	0
REFUSALS	2	2	1	5
CLOSED	8	7	2	17
Totals	20	9	5	

Total Referrals for December 34

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	9	3	0	12
VIS AGREED TO *	0	0	0	0
REFUSALS	4	1	0	5
CLOSED	7	6	4	17
Totals	20	10	4	34

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
January, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	10	6	2	18
VIS AGREED TO *	0	0	0	0
REFUSALS	4	2	0	6
CLOSED	13	5	2	20
Totals	27	13	4	

Total Referrals for January 44

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	17	1	0	18
VIS AGREED TO *	0	0	0	0
REFUSALS	6	0	0	6
CLOSED	8	12	0	20
Totals	31	13	0	44

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
February, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	6	1	6	13
VIS AGREED TO *	0	0	0	0
REFUSALS	4	4	0	8
CLOSED	10	5	0	15
Totals	20	10	6	

Total Referrals for February 36

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	12	1	0	13
VIS AGREED TO *	0	0	0	0
REFUSALS	7	1	0	8
CLOSED	2	9	4	15
Totals	21	11	4	36

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
March, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	6	1	4	11
VIS AGREED TO *	0	0	0	0
REFUSALS	5	5	0	10
CLOSED	17	1	3	21
Totals	28	7	7	

Total Referrals for March 42

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	10	1	0	11
VIS AGREED TO *	0	0	0	0
REFUSALS	7	3	0	10
CLOSED	4	12	5	21
Totals	21	16	5	42

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
April, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	5	6	1	12
VIS AGREED TO *	1	0	0	1
REFUSALS	7	4	1	12
CLOSED	10	6	1	17
Totals	23	16	3	

Total Referrals for April 42

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	11	1	0	12
VIS AGREED TO *	1	0	0	1
REFUSALS	12	0	0	12
CLOSED	4	11	2	17
Totals	28	12	2	42

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
May, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	10	5	1	16
VIS AGREED TO *	0	0	0	0
REFUSALS	7	3	1	11
CLOSED	17	9	0	26
Totals	34	17	2	

Total Referrals for May 53

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	15	1	0	16
VIS AGREED TO *	0	0	0	0
REFUSALS	8	3	0	11
CLOSED	6	13	7	26
Totals	29	17	7	53

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
June, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	8	10	2	20
VIS AGREED TO *	0	0	0	0
REFUSALS	5	3	1	9
CLOSED	19	6	1	26
Totals	32	19	4	

Total Referrals for June 55

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	20	0	0	20
VIS AGREED TO *	0	0	0	0
REFUSALS	8	1	0	9
CLOSED	6	17	3	26
Totals	34	18	3	55

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
July, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	12	2	0	14
VIS AGREED TO *	0	0	0	0
REFUSALS	9	0	0	9
CLOSED	12	8	3	23
Totals	33	10	3	

Total Referrals for July 46

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	14	0	0	14
VIS AGREED TO *	0	0	0	0
REFUSALS	9	0	0	9
CLOSED	4	15	4	23
Totals	27	15	4	46

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
August, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	4	3	3	10
VIS AGREED TO *	0	0	0	0
REFUSALS	5	1	1	7
CLOSED	12	9	2	23
Totals	21	13	6	

Total Referrals for August 40

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	10	0	0	10
VIS AGREED TO *	0	0	0	0
REFUSALS	7	0	0	7
CLOSED	5	15	3	23
Totals	22	15	3	40

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
August, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	4	3	3	10
VIS AGREED TO *	0	0	0	0
REFUSALS	5	1	1	7
CLOSED	12	9	2	23
Totals	21	13	6	

Total Referrals for August 40

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	10	0	0	10
VIS AGREED TO *	0	0	0	0
REFUSALS	7	0	0	7
CLOSED	5	15	3	23
Totals	22	15	3	40

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
September, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	8	0	1	9
VIS AGREED TO *	0	0	0	0
REFUSALS	4	0	0	4
CLOSED	15	2	1	18
Totals	27	2	2	

Total Referrals for September 31

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	6	3	0	9
VIS AGREED TO *	0	0	0	0
REFUSALS	2	2	0	4
CLOSED	10	8	0	18
Totals	18	13	0	31

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
October, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	7	4	1	12
VIS AGREED TO *	0	0	0	0
REFUSALS	2	1	0	3
CLOSED	19	8	1	28
Totals	28	13	2	

Total Referrals for October 43

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	10	2	0	12
VIS AGREED TO *	0	0	0	0
REFUSALS	3	0	0	3
CLOSED	3	19	6	28
Totals	16	21	6	43

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
November, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	6	1	6	13
VIS AGREED TO *	0	0	0	0
REFUSALS	2	0	0	2
CLOSED	20	15	3	38
Totals	28	16	9	

Total Referrals for November 53

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	12	1	0	13
VIS AGREED TO *	0	0	0	0
REFUSALS	2	0	0	2
CLOSED	20	15	3	38
Totals	34	16	3	53

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
December, 1987

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	4	2	0	6
VIS AGREED TO *	0	0	0	0
REFUSALS	3	1	1	5
CLOSED	10	6	1	17
Totals	17	9	2	

Total Referrals for December 28

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	6	0	0	6
VIS AGREED TO *	0	0	0	0
REFUSALS	5	0	0	5
CLOSED	4	10	3	17
Totals	15	10	3	28

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
January, 1988

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	6	6	3	15
VIS AGREED TO *	0	0	0	0
REFUSALS	2	2	2	6
CLOSED	16	3	2	21
Totals	24	11	7	

Total Referrals for January 42

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	13	2	0	15
VIS AGREED TO *	0	0	0	0
REFUSALS	6	0	0	6
CLOSED	3	13	5	21
Totals	22	15	5	42

* Victim agreed to interview, however case was disposed of prior to interview.

MONTHLY STATISTICS
February, 1988

	District #1	District #3	District #6	Totals
ACTIVE	0	0	0	0
PREPARED VIS	4	1	1	6
VIS AGREED TO *	0	0	0	0
REFUSALS	0	0	0	0
CLOSED	9	1	2	12
Totals	13	2	3	
		Total Referrals for February		18

	Phone	No Phone	No Means (Missing)	Total
ACTIVE	0	0	0	0
PREPARED VIS	6	0	0	6
VIS AGREED TO *	0	0	0	0
REFUSALS	0	0	0	0
CLOSED	7	3	2	12
Totals	13	3	2	18

* Victim agreed to interview, however case was disposed of prior to interview.

APPENDIX Q

Suit Nos. 441/86 and 469/86

IN THE COURT OF APPEAL OF MANITOBA

Coram: Monnin, C.J.M., Philp and Twaddle, JJ.A.

BETWEEN:	
HER MAJESTY THE QUEEN,	J. D. Montgomery, Q.C. for the Crown
Respondent/Appellant,	J. J. Gindin for the accused
- and -	Appeal heard and decision pronounced: March 11, 1987
ALLAN RODNEY CAMPBELL,	
(Accused) Appellant/Respondent.	

MONNIN, J.A.: (for the Court)

The accused appealed his conviction by Simonsen, J. on one count of indecent assault, namely fellatio, on a seven year old step-granddaughter and one count of having sexual intercourse with the same child. There were a few episodes and they occurred between April and September, 1984, at which time they ceased. The accused was charged in 1985 and the trial was held last fall. This appeal against conviction has been abandoned and it is therefore dismissed.

The Crown asks leave to appeal from a sentence of 30 months imposed on the accused who has a short record but no convictions since 1978.

We grant leave to appeal but refuse to interfere as under the circumstances of this case and of this accused, the sentence, though low, is fit and proper. The appeal against sentence is also dismissed.

The Crown had filed a probation report as well as a victim impact report prepared by a social worker. Crown counsel now argues that the victim impact report was too favourable to the accused and may have influenced Simonsen, J. in imposing an inadequate term. The irony of the matter is that the Crown shows dissatisfaction with a report which it tendered. At a more opportune time we will comment on these reports or will add something to these brief notes.

C.J.M.

WE AGREE:

J.A.

J.A.

T. Clarke
Victim Impact
Statement Project
5th floor - Woodsworth Bldg

Suit No. 417/86

IN THE COURT OF APPEAL OF MANITOBA

Coram: Monnin, C.J.M., Huband and Twaddle, JJ.A.

BETWEEN:	
HER MAJESTY THE QUEEN,	S. S. Nozick for appellant
Respondent,	R. A. Saull for respondent
- and -	Appeal heard: March 4, 1987
RONALD JEFFREY LANG,	
(Accused) Appellant.	Judgment delivered: April 2, 1987

TWADDLE, J.A.

This is an appeal from a conviction of the accused by Krindle, J., sitting without a jury, on two charges of gross indecency and one of sexual assault. Questions are raised as to the danger of convicting an accused person on the unsupported testimony of a young witness, but the essential question for the determination of this court is whether the verdict is unreasonable.

The complainant is a young girl born on August 18, 1975. She was apprehended from her natural mother in May, 1982, an apprehension subsequently supplanted by an order of permanent guardianship. On August 16, 1982, she was placed in the home of the accused's future parents-in-law ("the parents-in-law") where she remained until September 27, 1984. She was removed from there for reasons totally unconnected with her subsequent allegations against the accused and placed in another foster home in which she remained until August, 1985, when she was moved to the foster home in which she lived at the time of trial.

The matters of complaint did not come to light immediately following their occurrence. The alleged incidents occurred, if they occurred at all, between August 1982 and September 1984. It was not until December 1985 that a complaint was made. The complainant then told her foster mother something which led to the complainant being examined medically. We do not know, of course, what the complainant told her foster mother or what allegations were relayed to the examining doctor, but we do have his testimony at trial in which he stated that the physical evidence he found "was not evidence that fitted the majority of the allegations." All that the doctor found was that the condition of the girl's vaginal orifice was compatible with there having been digital

penetration. The hymen was not injured and the condition of the vaginal orifice was not such that it would have alerted the doctor to the likelihood of an assault having taken place if he had not been told about it.

A complaint was made to the police who confronted the accused with it in January, 1986. The accused was co-operative and answered questions which the police put to him. He expressed shock at the allegations and denied them. Nonetheless, he was charged with committing acts of gross indecency and of sexual assault upon the girl between the date of her placement in the home of the parents-in-law and the date of her removal from there. The first charge involved an unspecified number of acts of fellatio; the second, a single act of cunnilingus; and the third, sexual assault. The accusations came on for trial in September, 1986, before Krindle, J. sitting without a jury.

The circumstances in which the offences are alleged to have occurred are not extraordinary, but should be noted nonetheless. The home of the parents-in-law had been inhabited during the relevant period by the parents-in-law, their daughter Mary (now the wife of the accused) and four other children including the complainant and her younger sister. During the day the home also served as a nursery for the care

of young children (between 15 and 20 of them), the supervision of whom ordinarily involved the presence of at least two adults. The accused, then courting Mary, visited the home on numerous occasions. Most of his time there was spent with Mary, but sometimes he would talk with her kid brother and, on occasions, he would act as a supervisor of the children in the nursery.

It is impossible to exclude the possibility of the accused having been left alone in the house with the complainant, but it is unlikely that this occurred other than on a rare occasion. Even the complainant, in her evidence, did not suggest that the incidents about which she testified occurred when no one else was in the house. Indeed, she said positively that at least two of the most significant incidents occurred when other people were at home going about normal household activities.

The complainant's recollection of when the incidents took place was not precise. She "guessed" (her word) that the total number of incidents involving the accused was "in the forties", but she was specific about only six. Two of the six incidents involved nothing beyond a simple kiss. The other four involved fellatio, one of them involving additionally an act of cunnilingus and an act of digital penetration of the

complainant's vagina.

One of the acts of fellatio was interrupted, so the complainant testified, when Mary's grandmother came upon the scene. The alleged incident occurred in the laundry room in the basement of the home. The grandmother came downstairs because the complainant, who had gone down there to use the washroom, was taking a long time. The accused quickly pulled up his pants (presumably as the grandmother was coming down the stairs) before having a conversation with the grandmother. The grandmother and the complainant went upstairs together.

Another of the acts of fellatio occurred, according to the complainant, when the accused was on an errand to fetch milk from a fridge in the basement. That alleged incident was interrupted by someone calling the accused because he was taking so long to get the milk.

The complainant's description of the six specific incidents was not detailed. It was equally capable of being an account of actual or imagined events. The complainant did not recount any immediate reaction on her part to the accused's conduct.

The accused did not rely upon his right to remain

silent. He testified. He denied generally that he had conducted himself improperly with the complainant and specifically that the incidents alleged by her had occurred. His conduct when visiting the home of the parents-in-law, as described by him, was consistent with what one would expect of a young man calling at the home of his future wife.

Mary also testified. In general she corroborated the circumstances of the accused's visits and what the two of them did during them. She could not, of course, disprove the occurrence of the specific incidents alleged by the complainant as it had not been suggested that she had been present when any of them occurred.

Mary's grandmother was more helpful. In her evidence she said, contrary to the evidence of the complainant, that she had never seen the complainant and the accused together in the laundry room.

The learned trial judge was impressed most favourably by the complainant as a witness, stating,

> "Her intelligence, her capacity to observe, to recall and to articulate in many respects defies attempt at description. She is mature beyond her years."

Later the learned trial judge said:

> "Her testimony on cross-examination was totally unshaken. No reason for fabrication has been shown or suggested. I know that there is no requirement on counsel to do it, but nothing in the way in which she testified indicated that she might be lying and no reason for lying has been shown."

The learned trial judge cautioned herself about the dangers inherent in accepting the testimony of persons of tender years, particularly in the absence of corroboration. Notwithstanding, the learned trial judge was left with an abiding conviction of the truth of what the complainant said. "That was," the trial judge said, "basically the way I was feeling this morning when I walked into court." The learned trial judge had walked into court that morning before any of the defence evidence had been called.

The learned trial judge preferred the complainant as a witness to both the accused and his wife, finding the evidence of the couple to have had "a patness about it and a certainty to it that strikes me as being rehearsed." At the same time she thought, "...to a certain extent...there was a remarkable disparity in their testimony." In the result, she did not believe the defence evidence, saying that it did not even have the effect of raising a doubt in her mind, and convicted the accused.

The accused appealed his conviction.

At the commencement of the hearing of the appeal, the accused applied for leave to adduce fresh evidence as to his reputation in the community. There was no adequate reason given why this evidence had not been called at the trial, and, in any event, it was not evidence of a decisive kind. In those circumstances the application was rejected.

Counsel for the accused argued that a trial judge must not decide a case before she has heard all of the evidence. That, as an abstract principle, is true. In R. v. Young (1964), 48 Cr.App.R. 292, the English Court of Criminal Appeal quashed a conviction where a jury had reached its verdict before hearing what the judge had to say to them in his charge with regard to the defence. In that case, however, the foreman purported to deliver the verdict of the jury without apparent consultation with the others. On enquiry, the foreman acknowledged that the jury had made up their minds over the previous adjournment before hearing the conclusion of the charge in which the judge dealt with the defence.

Unlike a jury, a judge has no one to consult. It is thus impossible to say that a verdict delivered at the conclusion of a case was reached without regard to all of the evidence and arguments which preceded it unless, of course, the trial judge says, in reasons given for the verdict, that

she did not consider particular evidence. That is not what happened in this case. The learned trial judge said that she did not believe the defence evidence: it did not have the effect of raising a doubt. Of necessity, this means that she considered it in arriving at her verdict.

Counsel for the accused refined his point. A trial judge, he argued, must not believe a particular witness or find a particular fact to be proven until she has heard all of the evidence. I think that argument is sound, but that does not mean that what the learned trial judge did in this case was wrong. It is unrealistic to think that, as a case proceeds, a judge will not form a preliminary view as to the credibility of a witness or as to the truth of something alleged. The judge must, of course, avoid the pitfall of permitting a preliminary view to be inflexible, incapable of being changed by other evidence that follows, but an impression formed as the trial proceeds is only natural. In my view, when the learned trial judge said that she was left with an abiding conviction of the truth of what C.L.C. said, she meant that that was her state of mind at the conclusion of the trial. Her further comment that that was basically the way she felt before hearing the defence evidence is nothing more than an indication of the preliminary impression she had formed.

Counsel for the accused also argued that the trial judge erred in convicting the accused on the basis of the uncorroborated testimony of a child. The pith of his submission was not that no accused person should ever be convicted on the basis of the uncorroborated testimony of a child, but rather that the accused should not have been convicted on such evidence in the circumstances of this case.

The danger of basing a conviction on the testimony of only one witness, particularly a child, is a danger that has been recognized for some time. In D.P.P. v. Hester (1973), 57 Cr.App.R. 212, Lord Morris of Borth-y-Gest had this to say about it (at p.219):

> "The accumulated experience of courts of law, reflecting accepted general knowledge of the ways of the world, has shown that there are many circumstances and situations in which it is unwise to found settled conclusions on the testimony of one person alone."

As a matter of policy the courts and legislatures attempted to meet the danger by prescribing that a judge warn a jury that it was unsafe to convict a person on the uncorroborated evidence of particular classes of witness. Lord Morris referred to this policy in D.P.P. v. Hester, supra, at p.219, when he said:

> "It must, therefore, be sound policy to have rules

> of law or of practice which are designed to avert the peril that findings of guilt may be insecurely based. So it has come about that certain statutory enactments impose the necessity in some instances of having more than one witness before there can be a conviction."

Thus it was that in Canada, prior to 1975, a judge was required to warn a jury that it was unsafe to convict a person on the uncorroborated evidence of a witness who claimed to have been the victim of a sexual offence. A similar rule applied, and still applies, in the case of uncorroborated evidence given by a child. The particular rationale for the rule in the case of a child witness was explained in D.P.P. v. Hester, supra, by Lord Morris in these terms (also at p.219):

> "Sometimes it may be that owing to immaturity or perhaps to lively imaginative gifts there is no true appreciation of the gulf that separates truth from falsehood."

Reliance by the courts upon uniform, invariable rules to avert the danger of a mistaken verdict produced its own difficulties. Courts were diverted, at times, from a consideration of the essential question of guilt or innocence by a consideration of the secondary question of what evidence was capable of amounting to corroboration. The warning that it was dangerous to convict in the absence of corroboration had to be given because the witness was of a class of persons whose

evidence sometimes might not be true, although on the facts of the particular case there might have been little danger of falsity or make-believe. The failure to give the warning, whether it was in fact required, was, on occasion, fatal to an otherwise reasonable verdict. In the case of a judge sitting without a jury, the repetition of the warning of danger in every case in which it was required by law, whether a danger actually existed or not, created its own danger of the judge being lulled into a state of mind in which the theoretical danger might be acknowledged but a real danger overlooked.

Thus, in 1975 the statutory requirement that a warning be given of the danger of convicting a person on the uncorroborated evidence of the complainant in a case involving a sexual offence was repealed. Since 1982, when s.246.4 of the Criminal Code in its present form was first enacted, a judge has not been permitted to warn a jury that it is unsafe to find an accused guilty of sexual assault or indecency on the uncorroborated evidence of the complainant.

The requirement that a warning of the danger of convicting a person on the uncorroborated evidence of a child remains on the statute book, but neither the subsistence of the requirement nor the fact that the warning has been given in a particular case should be permitted to overshadow the

consideration of whether, in the circumstances, there really is a danger. If there is no real danger on the facts, the trier of fact may convict despite the warning. Yet, if there is a real danger that the child's evidence may be fanciful, the trier of fact may not act unreasonably by turning a deaf ear to the warning.

The dominant principle of our criminal law, to which all others are subservient, is that an accused person is presumed innocent until his or her guilt has been established beyond doubt. The classic statement of this principle was made by Viscount Sankey in Woolmington v. D.P.P., [1935] A.C. 462, at p.481, where he said:

> "Throughout the web of the...Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt.... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law...and no attempt to whittle it down can be entertained."

The exactness of the principle is tempered by the qualification that the doubt which justifies a verdict of acquittal must be reasonable. At the same time a trier of fact cannot get rid of doubt by giving unreasonable credence to evidence which is not only uncorroborated as a matter of law, but also is unsupported by the circumstances. Ultimately, the trier of fact

must be alive to the precept expressed by Sir William Blackstone in these terms: "...[I]t is better that ten guilty persons escape than one innocent suffer." (Commentaries, Book IV, p.358).

The requirement that guilt be proved beyond doubt is ordinarily a sufficient safeguard of the innocent. As a further protection s.613(1)(a)(i) of the Criminal Code empowers an appellate court to set aside a verdict which is unreasonable. This power does not enable an appellate court to retry a case and substitute its opinion for that of the trier of fact, but it does enable an appellate court to consider the weight of the evidence and to set aside the verdict if it concludes that the verdict is such that no trier of fact could reasonably have reached it: see Corbett v. The Queen (1973), 14 C.C.C. (2d) 385. A trier of fact, obviously, will have had, in a subjective sense, no reasonable doubt before entering a guilty verdict. The function of the appellate court is to say whether, in an objective sense, it was reasonable for any trier of fact to be satisfied to that extent on the evidence given in the case.

By their nature, sexual offences seldom are committed in the presence of witnesses. The only direct evidence of the commission of the offence and of the involvement of the accused

often comes from the complainant. Sometimes the complainant's evidence is corroborated by circumstantial evidence confirming the commission of the offence, the involvement of the accused or both. Other times, when the circumstantial evidence is not actually corroborative, the surrounding facts nonetheless are more consistent with the truth of the complainant's evidence than with its falsity. When that is so, a verdict based upon a belief in the truth of the complainant's evidence is likely reasonable. When, however, there is neither corroboration nor other factual support for the evidence of the complainant, the reasonableness of a guilty verdict must be questioned.

There are circumstances in which it would be reasonable for a trier of fact to convict an accused person in reliance upon the evidence of one witness notwithstanding the absence of both corroboration and surrounding facts which are supportive. A catalogue of circumstances in which reliance may reasonably be placed on the evidence of one witness is no more available than one in which are listed the circumstances in which it would be unsafe to do so. It is the function of an appellate court to review the particular circumstances and decide whether or not any trier of fact could reasonably have convicted the accused person in them. That proposition is in accord with the view of Laskin, J. (as he then was) in Corbett, supra, at p.392. Although Laskin, J. was there in the

minority, his view on this point was not contradicted by the majority and, in any event, the proposition, as I have stated it, is narrower than that propounded by Laskin, J.

The opportunity which a trier of fact has to observe and listen to a witness gives the trier of fact a distinct advantage over judges of appeal in determining credibility. This oft repeated truism does not mean, however, that because a complainant was a convincing witness a trier of fact may, on that ground alone, convict an accused in all circumstances. It is well within judicial experience that even the most convincing witness may be an inventive one. Reason dictates that if there is in the circumstances of the case even a possibility, not itself fanciful, that the complainant's account of events may have been imagined, the trier of fact should not convict in the absence of some fact, independently established, which connects the complainant's account with reality.

In the case at bar, the allegations were unsupported by the circumstances. Apart from the testimony of the complainant herself, there was no evidence which confirmed that she had been the victim of an assault or of an indecency, that the accused had been involved with her in any improper way or, even, that connected the complainant's account with reality. Not only was it possible for those reasons that the alleged

incidents were fanciful, but the medical evidence indicated that not all of the allegations which had been made by the complainant were true.

The accused denied the accusations both to the police and in his testimony. He admitted nothing inconsistent with his innocence. He called as a witness the only person who, if the complaint was true, had been in a position to confirm a material aspect of it. The evidence of that witness was inconsistent with the truth of the complaint.

Bearing in mind the dangers of relying exclusively on the evidence of a complainant in circumstances such as those found in this case and the requirement that the charge be proved beyond reasonable doubt, I am of the view that it would have been unreasonable on the facts of this case for any trier of fact to have reached a guilty verdict. The credibility of the complainant was not of itself, in the particular circumstances, a reasonable basis for a conviction.

For these reasons, I would allow the appeal, set aside the convictions and direct that verdicts of acquittal be entered on each charge.

A. Ken Tweddle J.A.

I AGREE:

Thos. R. Haddad J.A.

Suit No. 417/86

IN THE COURT OF APPEAL OF MANITOBA

Coram: Monnin, C.J.M., Huband and Twaddle, JJ.A.

B E T W E E N:

HER MAJESTY THE QUEEN

Respondent

- and -

RONALD JEFFREY LANG

(Accused) Appellant

S. S. Mozick
for the appellant

R. A. Saull
for the respondent

Appeal heard:
March 4, 1987

Judgment delivered:
April 2, 1987

MONNIN, C.J.M.:

The accused appeals his conviction by Krindle, J., sitting without a jury, on two charges of gross indecency, namely one act of fellatio and one act of cunnilingus, and one charge of sexual assault. He also appeals the term of four years imposed on him alleging that it is harsh and excessive.

The victim was the same in all three charges, namely a girl born on August 8, 1975 who was 11 years of age at the date of trial and in grade 6 at public school. It is alleged that the events occurred between August 1982 and September 1984 when the victim was between 7 and 9 years of age. She is the oldest of three children born to an intellectually

and emotionally limited single mother. Along with a sister she was apprehended on May 18, 1982 and became a permanent ward of the Children's Aid Society on July 25, 1983. Her younger sister was apprehended at birth.

On August 16, 1982 she was placed in the home of Mr. and Mrs. Slobodzian where it is alleged the events occurred. For reasons totally unconnected with the sexual episodes, she asked to be removed from the Slobodzian residence. With her young sister she was removed on September 27, 1984 and was then placed with the Enns family until August 10, 1985 at which time she was placed with Mr. and Mrs. Williamson. She therefore resided in the Slobodzian home for some 25 months. It is to Mrs. Williamson that she first confided the accused's conduct towards her. A social worker was informed on December 4, 1985 whereupon the child was taken to the Children's Hospital and interviewed by Dr. Charles Ferguson who had known her and had treated her previously thereto. Dr. Ferguson testified as to her physical condition on the day of the interview. As a result of that interview and the doctor's remarks the police became involved.

On September 11, 1986 this 11-year-old child took the witness stand. On reading the cold transcript of this case, like Krindle, J., I was struck, surprised and at times amazed by this child's command of the English language as well as her

knowledge of sexual expressions such as vagina, penis, "sixty-nine", etc. At one stage, without any prompting whatsoever and without the word having been mentioned in at least 3 pages of prior transcript, when speaking of her testimony at the preliminary hearing, she used the word "transcript". She also spoke of Mr. Slobodzian being ill with a brain tumor. One would not normally expect this type of vocabulary and this ease of expression from an 11-year-old child.

On a number of occasions she testified that there were some 40 sexual encounters with the accused. When forced to detail each and where they occurred, she could only give particulars of 5 or 6 such incidents but these 5 or 6 episodes were specific and detailed and, to boot, defence counsel in cross-examination had her repeat in her own words two of these events.

Since Twaddle, J.A. has concluded that it is unreasonable and unsafe to convict on this evidence, I am compelled to quote lengthy extracts of this girl's testimony as well as most of what Krindle, J. expressed in her reasons when she concluded the accused was guilty.

It is obvious that I have reached the conclusion that there is enough convincing evidence on the record to support the conviction and that I cannot attribute any error

on the part of Krindle, J. I would dismiss the appeal as to conviction and as to sentence I will comment later on in these reasons.

The following is what the child said in response to the judge's questions to determine whether she could be sworn:

Q Do you go to church?

A Yes.

Q Do you take Bible studies at church?

A Yes. At Sunday School.

Q Sunday School?

A Yes.

Q Do you know what a Bible is?

A Yes.

Q What is the Bible?

A It's God's word.

Q Now do you know what an oath is?

A Hm-hm.

Q What is an oath?

A It's a promise to God that you are going to tell the truth.

Q And what happens if you break that promise to God?

A That's called sin and that's bad to do.

. . . . .

Q C-L [initials of the victim], do you know why we are here today, what this is all about?

A 'Cause the first court I had the preliminary court and that was just so we'd see if there was enough evidence to come to this court, so I can tell my story again.

Q And in this court what will happen?

A A decision will be made whether Ron [the accused] goes to jail or not.

Q And a decision will be made whether Ron did something to you or not, something wrong to you?

A Yes

Q Do you understand, C.L., that if you were to lie in any way in this court about what Ron did that it could result in something very bad happening to Ron?

A Yeah.

Many an adult would not pass the test that easily.

With respect to the sexual assaults upon her, the victim testified in part as follows:

Q Do you remember when it was that you went to live with the Slobodzians?

A Approximately two weeks after my seventh birthday.

Q And your date of birth is what?

A August 8, 1975.

. . . . .

Q And can you tell us how often it might have been that Mr. Lang was over at the house?

A Well, sometimes he'd be there every day of the week, sometimes just some of the days of the week.

Q Can you tell us how often he was there when Mary was babysitting you and the Slobodzians weren't there?

A I have no idea.

Q Now how did you get along with Ron?

A Oh, well I didn't like him very much if that's what you mean.

. . . . .

Q Okay. Now, do you know why you are in court today, C-L?

A Yes.

Q Why is that?

A Because in the preliminary court the judge there felt that there was enough evidence so I could come here, like there's enough evidence in my story, and so I came here, to make the big decision about Ron, whether he goes to jail or not.

Q You say your story, what was your story about?

A Well, the things Ron did to me.

. . . . .

Q So he took you by the hand and he took you to a bar?

A Yes.

Q When you say a bar, do you mean a bar that you hang clothes on or do you mean by a bar where people serve drinks?

A Serve drinks.

Q Okay. And when he took you to the bar what happened then?

A Well, he told -- okay. He pulled down his pants a little and he told me to get on to my knees and then he had me open my mouth up and then he put his penis inside my mouth and he wanted me to suck his penis, and I knew what he wanted because he had done it before that.

Q He had done it before? When?

A Before that time.

. . . . .

Q And how long did you do that for by the bar?

A For a little while. Not very much.

Q And after you did that, what happened then?

A Then he got me up and he told me to kiss him again, so I kissed him. And then he said that when I kiss him I'm supposed to put my tongue in his mouth and he would put his tongue in my mouth, so then he told me to try it again, so I did.

Q And how long did you kiss him for?

A Not long at all.

Q Now after this happened by the bar, did you say anything to him, did he say anything to you?

A Well, he told me not to tell anybody and then somebody called him because he was taking really long to get the milk. So he had to go and get the milk. And I finished feeding the guinea pigs.

Q Now you said that it had happened before that, so you knew what he wanted; is that right?

A Hm-hm.

Q Can you tell us about the first time this happened?

A No, I don't remember it.

Q During the time that you lived at the Slobodzians, you said you sucked his penis, how many times did that happen?

A Well, I'm not sure exactly but my guess would be in the forties.

. . . . .

Q Now at the times he made you suck his penis on (...) Avenue where you were living, can you tell us where in the house this happened. You told us one incident by the bar in the basement, can you tell us where this might have happened in the house?

A Well, once it happened in the garage and once it happened in the laundry room, once in Mary's room.

. . . . .

Q Can you tell us what happened that time in Mary's room?

A Okay. Well, first of all, I'm not sure how but we were both in Mary's room and I was wearing overalls.

Q Yes.

A And he unbuttoned them and he pulled them down.

Q Yes.

A And asked when was the last time that I had taken a bath. And the time that I had taken a bath was yesterday so I said yesterday. And then he stuck his finger up my vagina and he started wiggling it around and it really hurt.

Q Do you know how long he did that for?

A I'm not sure exactly but my estimate is about a minute.

. . . . .

Q You said those things happened about forty times or so?

A Yes.

Q Did you say anything to him on those occasions?

A No.

Q And why is that?

A Well, as I said I was very scared of him.

Q Why were you scared of him?

A He wasn't really the nicest guy in the world.

. . . . .

Q Now, you will have to bear with me, I jump around a little bit. I want to take you back to Mary's room. You said he put his finger in your vagina for about a minute approximately?

A Yes.

Q After that happened what happened then?

A Well, then he pulled down his pants and he lay down on his back and he told me to lay on top of him but the reverse way.

Q Did he say anything about that?

A Well, before that he said that we were going to do something called sixty-nine.

Q Yes.

A And so then he told me to suck on his penis and he sucked on my vagina at the same time.

Q And how long did that happen for?

A I don't know.

Q Did you say anything while this was going on?

A No.

Q How did that stop? Do you remember?

A Yeah. Mary came home from wherever she was and so he quickly got me off of him and then -- well, quickly before

that he just kind of opened up his behind and told me to lick the inside of it. And so I asked him why and he just said because and so I had to.

Q And how long did you do that for?

A Well, just one lick, you know, really fast. And then before I left he said if I told anyone that he would find me somewhere and he'd kill me wherever I was.

. . . . .

Q All these times that he made you suck his penis do you remember who was home at these times?

A No.

Q Do you remember the times of day, was there any particular time of day this would happen?

A No, I'm not sure what times of days it would be.

Q Would it be the same time of day or different times of day?

A It'd be different.

Q And the times that these happened, do you remember whether or not Mr. and Mrs. Slobodzian were home?

A Well, sometimes they were but most of the times they weren't.

. . . . .

Q Now, did you ever, while you were living at the Slobodzians, tell anybody what happened to you?

A You mean what Ron did to me?

Q Yes.

A No., I didn't.

Q Can you tell us why?

A Well, I couldn't trust anybody.

Q After you moved out of the Slobodzians into the Enns' place -- that was your next place you stayed; is that right?

A Yes.

Q Did you tell anybody at the Enns' house?

A No, I didn't.

Q Is there any reason for that?

A I still - I just couldn't trust anybody. It was hard to trust people back then.

Q Back then?

A Yes.

Q What about now?

A Now, well, I trusted my mom [Mrs. Williamson] because she told me no matter what I say or what I do she is still going to love me just the same. And I can tell my problems to her and she'd try to help me with them.

Q Who was the first person you told?

A My mom.

Q Mrs. Williamson?

A Yes.

Q How long were you staying with Mrs. Williamson before you told her?

A Okay, well, I moved there in August, I told her sometime in December.

Q December of last year, 1985; is that right?

A Yeah. I got it mixed up the last court, I thought it was October.

Q Okay. So you moved there in August and you told her in December; is that right?

A Yes.

Q When you moved there in August, was that the first time you had met Mrs. Williamson?

A No. Beforehand I had gone and had little visits with her.

. . . . .

Q When you said that Ron made you suck his penis, what are you referring to when you say penis?

A A man's private spot.

Q And when you say vagina, what are you referring to?

A A girl's private spot.

Q During the times that these things happened, did anything come out of his penis?

A I think so because like it felt -- his penis felt really slimy and I told that to my mom and she said that was something called sperm.

Q And of these times this happened, do you remember how much of the time it felt slimy?

A Three-quarters probably.

Defence counsel, who was not the same counsel who represented the accused at the hearing before us, got the witness to confirm that the accused on one occasion placed his finger in her vagina and had her confirm the episode in the garage. With this evidence going in on cross-examination, how can this court say that the case is not proven? Here is what defence counsel obtained from the witness:

Q Now you told that Court that Ron put his finger in your vagina one time?

A Right.

Q You are quite sure of that?

A Yes.

Q One time only?

A One time only.

Q And you said that there wasn't any blood coming out of there until some time after you left the Slobodzian house?

A Right.

. . . . .

Q Did you know that Mr. Slobodzian is sick?

A Well I knew he had a brain tumor.

. . . . .

Q C, you told us about an incident that happened in the furnace room and you said that was the first time that Ron had

ever done anything to you; do you remember that?

A Yes.

. . . . .

Q Do you know where in the house Stevie and Amanda were when the thing happened in the bedroom?

A They were in the kitchen.

Q And how far is that from Mary's bedroom?

A Probably ten, eleven, twelve feet.

Q Now you told us that the first time that he made you suck his penis was in the furnace room?

A No.

Q That's the first time you remember?

A Yeah, but not ...

Q That's not the first time?

A Yeah. I think the first time that something happened was when he first kissed me. I don't remember the first time that I sucked his penis.

Q You don't remember that; is that right?

A That's right.

Q But you do remember the time when he took you behind the bar?

A Right.

Q Is that right?

A Right.

Q Now you said this morning that you thought that it

felt kind of slimy?

A Right.

Q Do you remember at any point anything in your mouth changing while you were doing that? Did anything come into your mouth?

A (No response)

THE COURT: Can you answer that, C?

THE WITNESS: I don't know. Like I said it just felt slimy.

. . . . .

Q Did any kind of liquid come out of your mouth on to your chin or your face?

A No.

Q And does that answer -- would you give the same answer if I were to ask you about all the forty times?

A Right.

. . . . .

Q What were you doing around the garage; how did you come to be at the garage?

A Well, Cathy's car was overheating and so Ron went to get antifreeze and he said he needed a helper, and I think that was just because he wanted me to go to the garage with him. And so little Chris that's littler than me, he said, "I'll go", and he goes, "No, C.'s just the right size." So I had to go with him. And we went to the back of the garage where no one could

see us and there he put the antifreeze down and then he pulled down his pants and he told me that he wanted me to suck on his penis.

Q Are you saying that this happened outside the garage?

A Inside.

Q Inside. And how many doors are there to the garage?

A Two.

Q I take it there's a small door that you walk through and a big door that the car drives into?

A Right.

. . . . .

Q And what happened, what happened right after you went into the garage?

A Well, then we walked to the back and then, just like I said, he put the antifreeze down and then he pulled his pants down and he made me suck his penis.

Q Okay. What happened after that was finished?

A Well, then he pulled his pants back up and he picked up the antifreeze and then we left the garage.

Q And where did you go?

A I went to the front again.

Q The front of what?

A The front of the house.

Q You didn't go inside the house?

A No, we weren't allowed to.

Q You weren't allowed to go inside the house?

A Yeah, we were supposed to stay outside.

The Crown completed its case late on Tuesday afternoon, September 11, 1986. The defence witnesses testified on the morning of Wednesday, September 12, 1986. The defendant took the stand as did his wife Mary and her 71-year-old grandmother. After the noon recess Krindle, J. heard argument from defence counsel. She then informed Crown counsel that she did not need to hear from him and proceeded to give her reasons as follows:

> "I propose at the outset of my reasons to deal with the testimony of C-L. I think I can honestly say that in all my years being involved in the criminal courts, both as counsel and judge, I have never encountered a witness of tender years who has impressed me as favourably as C-L did on the stand yesterday. Her intelligence, her capacity to observe, to recall and to articulate in many respects defies attempt at description. She is mature far beyond her years.
>
> . . . . .
>
> "Her testimony on cross-examination was totally unshaken. No reason for fabrication has been shown or suggested. I know that there is no requirement on counsel to do it, but nothing in the way in which she testified indicated that she might be lying and no reason for lying has been shown.
>
> "I have cautioned myself repeatedly -- I did it last night, I did it over the noon hour again -- about the dangers inherent in the testimony of persons of tender years.

And notwithstanding all of those cautions, I believe the testimony of C-L.

"I have addressed the question of C-L's delay in making the complaint and, again, the reasons given by her for the delay I find to be convincing ones. Nothing in that youngster's life has given her any particular cause for trust of adults generally, social workers probably in particular. Let's face it, it was social workers who took her away from her mom, it was social workers who put her into a group home, it was social workers who took her out of the group home and put her into the Slobodzian home. If she does not consider social workers to be the greatest people on the face of this earth and the kind of people that you go to open up to, I do not blame her. And I do not say that as any putdown of social workers. ...

. . . . .

"I have directed my attention to the absence of corroboration. Dr Ferguson's testimony shows that the injuries were consistent with her complaint but really does not further her complaint. All that it does is it does not detract from her complaint. He does not say that her complaint could not be. So the physical findings were consistent.

"I have directed my attention to all of those items and at the end of it all, counsel, and notwithstanding all of those cautions, I am left with an abiding conviction of the truth of what C-L has said. And that was basically the way I was feeling this morning when I walked into court.

"... It strikes me as mind boggling, for example, that four years later people would come forward and say: 'C-L was never in the room when Ron and I were watching television.' She lived in the same house. In all probability she was. Maybe they remember it, maybe they don't remember it. The logical answer would be: I don't remember. But both of them didn't say I

> don't remember, both of them said a flat no, couldn't have been. And I found that incredible. It just does not sit right.
>
> "I find really the whole of the testimony of the accused and his wife in those areas where I think they expected to be testifying to have a patness about it and a certainty to it that strikes me as being rehearsed. The areas where they did not expect to be asked questions like: When was he working part-time and when wasn't he working part-time, or exactly what happened out on the railway tracks, they had real problems in recollection on significant events. And to a certain extent, certainly on the railway track incident, there was a remarkable disparity in their testimony.
>
> "At the end of the day, what I can say insofar as the defence evidence is concerned is that I did not believe it. It did not have the effect of raising a doubt. And I say that knowing that I am dealing with the uncorroborated evidence of a child of tender years with a delay in reporting. And I can still say to you that with all of those cautions to myself, I think more than in just about any case that I have ever seen of this nature, I am satisfied beyond a reasonable doubt in the truth of what C-L has had to say." (my underlining)

On that record Twaddle, J.A. is of the view that there was no reasonable basis on which Krindle, J. could convict. I am of the opposite view. With the clear evidence pertaining to five or six episodes, some reaffirmed on cross-examination, and with the clear and specific way in which Krindle, J. warned herself as to the sworn evidence of a very young girl, the absence of corroboration, the credibility of the various witnesses, including that of the infant, she was

left with an abiding conviction of the guilt of the accused. I am unable to say that Krindle, J. erred. Furthermore, she had the great advantage of seeing and hearing the witnesses and assessing their respective credibility. She therefore had a marked advantage over any one of us sitting on this appeal. Hearing and seeing the witnesses in this particular case and with this particularly bright child, I am unable to find error and would dismiss the appeal.

Now as to the sentence appeal. Since my colleagues have decided to acquit the accused, whatever I say on the subject is of little moment. I would affirm the four year sentence although I consider it high. Many a father, stepfather or foster father has received a much lighter sentence for acts of incest often spread over a long period of time.

Krindle, J. heard represententations as to sentencing on October 23, 1986. She had by then received a pre-sentence report to which was attached a two-page undated victim impact statement compiled and signed by Mrs. Diane Dolski, Social Worker, Child Abuse Witness Program. When the sentence hearing commenced, Krindle, J. indicated that she had received these two documents and had read them. It was then too late to rectify the impact of this report if it did in fact have an impact.

The record does not indicate who is responsible for this child abuse witness programme. In another sentence appeal heard subsequently to this particular appeal where a similar report had been prepared by Mrs. Dolski, Crown counsel informed the panel, of which I was a member, that it was a programme of the City of Winnipeg police force. There appears to be another programme sponsored by the Attorney-General's department which is being implemented at the present time on an experimental basis. I have yet to see a victim impact statement from this latter group and any comments I may wish to make will have to wait until I receive one. I must nevertheless comment about the specific report before us on this appeal. I am throwing a red flag on the field and giving advance warning that in the not too distant future serious consideration will have to be given to the propriety of such reports.

This report contains serious allegations by the foster mother as to the victim's behaviour and emotional state. Although no dates were given, it is claimed that the child made attempts to fondle her foster father's genitals, that she frequently talked about suicide and methods she would use and that on the day after the accused's conviction she crushed a wounded rabbit to death with a shovel. All of these are most unusual character traits indicating some emotional disturbance or trauma. It is questionable whether such acts or threatened

course of conduct can be directly attributable to the accused and his misconduct. If such allegations are to be made, the foster mother should have been called to testify and been subjected to cross-examination. Such allegations, if totally unsupported, can only be described as inflammatory. The sentencing process is too delicate to be disturbed by statements of a hearsay nature. I leave it at that and if further comments are necessary they will be made in due course.

I would therefore affirm the conviction and sentence.

C.J.M.

Manitoba

APPENDIX R

Memorandum

Date . October 1, 1987

To . All Crown Attorneys

From . John P. Guy, Q.C.
Assistant Deputy
Attorney General
5-405 Broadway
945-0230

Subject . **VICTIM IMPACT STATEMENT PROJECT** Telephone .

I previously requested your support in promoting Victim Impact Statements. More and more incidents have occurred where the Victim Impact Statement has not been requested following a finding of guilty; where VIS's were not used during sentencing; or where the Victim Impact Worker was not advised of sentencing dates. I can only assume these examples would indicate that some of you do not support Victim Impact Statements.

In cases where you have been advised there is a Victim Impact Statement, I would request that should there be a finding of guilt or a guilty plea, contact be made with Theresa Clarke, 945-0899, so that the Victim Impact Statements can be distributed to involved court parties. In situations where sentencing will follow immediately, the VIS can also be obtained immediately from the project. Your cooperation in returning the prosecutor questionnaires submitted with the Victim Impact Statements would be much appreciated.

This is departmental policy and as with any department policy it is expected to be followed unless there are extenuating circumstances. In the future, I will be monitoring the situation and will be requesting from Ms. Clarke cases in which the VIS has not been used. Written explanations should then be forthcoming from the responsible Crown Attorney. Failure to provide a reasonable explanation will be dealt with accordingly.

Yours truly,

John P. Guy, Q.C.
Assistant Deputy
Attorney General

JPG/ljb/